

# IPBA Journal

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NEWS & LEGAL UPDATE



INTER-PACIFIC  
BAR ASSOCIATION

# IPBA 2020 SHANGHAI

30th Inter-Pacific Bar Association Annual Meeting & Conference

📅 18-21 April, 2021

🏠 Shanghai International Convention Center



# IPBA 2020

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# IPBA Journal

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# The President's Message

**Jack Li**  
President



Established in April 1991 in the last ten years of the last century, the Inter-Pacific Bar Association (IPBA) is the first international lawyer's organisation born in Asia and, so far, it is also one of the major associations of lawyers around the world. The IPBA is an international association of business and commercial lawyers who have a strong interest in the Asia-Pacific region and it has bloomed brightly for almost 30 years.

From my point of view, members of the IPBA have several characteristics:

## Passion

In October 2019 I was invited to Hawaii to meet two former Secretaries-General and the founding members of the IPBA, such as Mark T. Shklov. I attended a presentation held by the University of Hawaii named 'Dialogue of Asia Law' with the purpose of attracting more young lawyers to join the IPBA. As I mentioned, Shanghai has the most representative offices of foreign law firms in China and is the only city in Mainland China where a Disney Resort is located. Furthermore, Shanghai Disney Resort started to earn a profit one year after its official grand opening. I am the legal counsel for Disney Resort's syndicated loan and I believe that the communication of international legal exchanges and national economic and trade cooperation are a win-win.

After the IPBA promotion in Hawaii, Mark specially gave me a precise and valuable piece of information before I returned to Shanghai. Honolulu was a kingdom before becoming the 50th state of the United States. The Hawaiian King once came to Shanghai shortly after the opening of the Shanghai Port in 1843. The King was surprised that Shanghai was a qualified city for international trade and that the people living there were showing their friendly manners to him. In light of

these conditions, he instructed the Foreign Minister to set up a consulate in Shanghai. The King mentioned that he used to be a lawyer. And Mark joked: if the King were still alive, he would definitely sign up for the IPBA Shanghai Annual Meeting & Conference.

## Sincerity

In October 2018, I went to Panama for the first time. Panama is a beautiful Central American country. Both IPBA members Juan Alexis Lopez Navarro and Juan Alexis López Amarís are descendants of a famous Panamanian Minister of Foreign Affairs. During my visit, I felt their sincerity just as the special meaning of Panama Canal. In May 2019, when Juan Alexis and his son paid a visit to China and saw the thriving scene of Shanghai, they immediately lobbied their friends to sign up for the IPBA Shanghai Annual Meeting & Conference. It seems to me that maybe the IPBA can organise a regional IPBA conference in Panama in the future.

## Pragmatism

Sebastian Kuehl, JCM of Germany, and Bart Kasteleijn, a long-standing and respected member of the IPBA, met with me several times in Manila and Singapore for council meetings and in Brussels and other places during IPBA seminars. As Chinese companies had more and more overseas investment and financing activities, I proposed that we write some practical articles together, and they accepted with pleasure. Consequently, *Legal Research on Investment and Financing of Chinese Enterprises in Overseas Countries and Legal Research on Investment and Financing of Chinese Enterprises in Singapore, Switzerland and Germany* were published, along with other masterpieces by our German and Dutch colleagues. Bart also flew to Shanghai several times to participate in relevant legal seminars and now many Chinese companies have become the overseas customers of IPBA members.

## Optimism

The sudden outbreak of COVID-19 caught people off guard and the IPBA Shanghai Annual Meeting & Conference, originally scheduled for April 2020, had to be postponed. Jonathan Warne, IPBA Committee Coordinator, sent me an enthusiastic encouragement email from London saying, 'I just want to thank you and your team for all the hard work in preparing for the conference. You are doing a wonderful job. You have my full support and I very much look forward to seeing you in Shanghai.'

Former IPBA President Lee Suet-Fern comforted me: 'You must be in a very difficult situation and our thoughts and support are fully with you. I well know what it was like as the Fukushima disaster (albeit a different issue) occurred during my presidency. Please let me know how I can be helpful or supportive in other ways. Hang in there!'

Without the encouragement and support of many IPBA members, the organisation and preparation work for the IPBA Shanghai Annual Meeting & Conference would not be sustainable.

On 28 August this year, I attended the virtual General Assembly at the Annual Congress of the AIJA. The IPBA and other global lawyers' organisations are good partners and we always support each other. They send representatives to our IPBA Annual Meeting & Conference every year. We have a powerful common destiny of this world; only mutual support can take it further.

The IPBA is Asian, but it also worldwide. As the Shanghai Annual Meeting song aptly sings, 'You were Born in Asia, and Grown up in the world, With different blood, But common pursuit'. I would also like to quote an old Chinese saying: 'It is a pleasure to have friends coming from afar'.

I wish you all an early escape from the pandemic. Let us meet again soon!

Jack LI  
President

## Join the Inter-Pacific Bar Association

Since its humble beginnings in 1991 at a conference that drew more than 500 lawyers from around the world to Tokyo, the IPBA has blossomed to become the foremost commercial lawyer association with a focus on the Asia-Pacific Region. Benefits of joining IPBA include the opportunity to publish articles in this IPBA Journal; access to online and printed membership directories; and valuable networking opportunities at our Annual Meeting and Conference as well as 10 regional conferences throughout the year. Members can join up to three of the 24 committees focused on various of commercial law practice areas, from banking and finance, to insurance, to employment and immigration law, and more. We welcome lawyers from law firms as well as in-house counsel. IPBA's spirit of camaraderie ensures that our members from over 65 jurisdictions become friends as well as colleagues who stay in close touch with each other through IPBA events, committee activities, and social network platforms. To find out more or to join us, visit the IPBA website at [ipba@ipba.org](mailto:ipba@ipba.org).





## The Secretary-General's Message

**Michael Burian**  
Secretary-General



Dear IPBA-Members,

The summer season is slowly but surely coming to an end and we still find ourselves in the strong grip of this global pandemic, with some countries being more affected than others. I would like to take this opportunity once again to express my gratitude towards everyone who helped the IPBA to maintain our activities wherever possible during these uncertain times, as well as everyone who helped to organise and reschedule past and upcoming events, such as the IPBA Annual Meeting and Conference in Shanghai from April 2020 to April 2021, and subsequently the Annual Meeting and Conference in Tokyo from 2021 to 2022.

As we all know and have experienced, now maybe more than ever, staying connected with one another is essential for our community and can not only help to build new business relations, but lively exchanges can also help everyone to grow and expand their knowledge and their expertise, as well as strengthen already existing relations. The only safe way to stay connected with our colleagues around the world and keep up with legal trends is through virtual means and IPBA members are enthusiastically preparing to bring you three webinars in September. On 7 September (US) and 8 September 2020 (Asia) we will hold an IPBA Webinar via Zoom concerning the topic 'International Trade in a Time of Crisis', organised by the IPBA's International Trade Committee. During this insightful online meeting, we will be able to hear lectures from highly respected speakers like Raj Bhala and Devin Sikes (both Vice-Chairs of the IPBA International Trade Committee) as well as Ngosong Fonkem (Vice-Chair, IPBA Next Generation Committee) on the impact of the current events on global business transactions. We were able to put together an interesting panel of experts from several different countries like China, Argentina and the United States and expect interesting discussions about the

dramatic, if not paradigmatic, shifts in international trade law and policy since the April 2019 IPBA Annual Meeting and Conference in Singapore. Among other severe multilateral factors like the free trade agreement or post-Brexit Britain wanting to join the CPTPP, the overwhelming COVID-19 pandemic has plagued all sectors, requiring new thinking about the purpose of international trade and accelerating yet further changes in cross-border supply chains. On 24 September the Legal Practice Committee and the Next Generation Committee have organised a panel of speakers to discuss the challenges of working from home. Will it become the new normal? Finally, on 28 September the new IPBA Investment Arbitration Sub-Committee of the Dispute Resolution & Arbitration Committee will hold a webinar on 'ICSID & UNCITRAL Draft Code of Conduct for Adjudicators in Investor-State Dispute Settlement'. Speakers from the Canadian Government, UNCITRAL and ICSID will join IPBA members for this important discussion.

Whether we are already halfway through this crisis or whether this is only the beginning, we should remind ourselves of the things that matter: to keep everyone safe around us by behaving responsibly and respecting the rules and operational guidelines set by governments and the WHO. Thanks to the fact that our world has never been as digitally connected as it is today, we are able to navigate through the challenge of keeping in touch while balancing the demands of responding to the issues caused by COVID-19.

**Michael Burian**  
Secretary-General





## Message to the Reader

**Priti Suri**

Chair – Publications Committee, IPBA

Dear Reader,

Welcome to the September issue of the IPBA Journal.

As 2020 moves forward, COVID-19 remains an integral part of our lives. We are all learning to cope with and adapt to what is being called the 'new normal' which means different things for different people. Personally, for me the year seems to be racing by and I cannot believe I am on my second edition of the IPBA Journal. I hope friends around the globe are all well and healthy. The theme for this month's issue of the Journal is 'Deal Making in COVID Times: New Trends'. It would not be wrong to state that varied global factors slowed deal activity towards the end of 2019 in some parts of the world. Add to that, in 2020 the COVID-19 crisis aggravated the pain as the pandemic has impacted all sectors, and the activity and outlook for this year and beyond remains uncertain at many levels. As a result, the overarching objective of most corporations has been conservation and financial prudence.

In the present edition of the Journal, the authors have covered varied ground. In the first article, a prominent member of IPBA and past Officer, Yap Wai Ming, explores telemedicine. Titled "Deal Making in COVID Times: The Rise of Telehealth", Wai Ming examines telemedicine's legal and regulatory framework in Singapore, its rise due to the pandemic, and the opportunities it presents for investors. Focusing on the existing law; guidelines as well as upcoming changes coupled with the legal challenges; and use of technology, the chapter provides a succinct yet detailed content with an excellent overview. Those looking to invest in this emerging space will find the content extremely useful.

In the second article, titled "Deal Making in COVID Times: New Trends" Atul Pandey & Sanchit Aggarwal

provide an Indian perspective and showcase how the pandemic, combined with turbulent markets, has led to a fall in inbound deal-making in India, but describe the relevance of importance and local consolidation. They discuss emerging trends; how investors could negotiate and cherry-pick in asset acquisition; and highlight issues in valuations, price adjustments and credit worthiness. They underscore that parties would do well to understand the changing dynamics and how dealing with some of the issues early on would be useful for all and get the transaction to the closing line.

The third article is on a topical subject: 'Challenges and New Trends in Inter-Governmental and Private Party Deal-Making Process'. The three co-authors: Ngosong Fonken, Ferran Foix and Santiago Fontana, evaluate and analyse selective challenges and trends caused by the pandemic at governmental and private sector levels and which are likely to redefine the deal-making process in the coming years. They address how international trade has played an important role during the virus and several deals have occurred, despite the initial interruptions. With the changing global business and social dynamics, conglomerates and investors look for deals with financial, and social and environmental impact. In effect, the pandemic has certainly caused disruption, but the situation can be viewed as an opportunity where stakeholders have found means to adapt to the changed ecosystem.

The final article, by Abiodun Olushola, is broadly based on 'New Trends' and touches on the long-term effects of COVID-19 on economies; whether a return to normalcy and the upsurge of technology will see an improvement in transactions; the importance of data; closing deals remotely; and how virtual transactions will look different.

In addition, there are details about new members between June and August. We encourage everyone to welcome them to the IPBA family.

A request for articles has already gone out for the December issue which will be on the theme 'Women and the Law'. At a time when remote working has placed greater pressure on women across the globe, it will be interesting to see what the future will hold. I

hope we will have articles from women from various parts of the globe! As always, all the requirements for submissions have been provided within the Journal. And, I know I speak both for my Vice-Chair, James Jung, and myself when I say we look forward to your timely and consistent contributions.

**Priti Suri**  
**Chair – Publications Committee of IPBA**

<b>IPBA Upcoming Events</b>		
<b>Event</b>	<b>Location</b>	<b>Date</b>
<b>IPBA Annual Meeting and Conferences</b>		
30th Annual Meeting and Conference	Shanghai, China	April 18-21, 2021
31st Annual Meeting and Conference	Tokyo, Japan	Spring 2022
32nd Annual Meeting and Conference	Dubai, UAE	Spring 2023
<b>IPBA Mid-Year Council Meeting &amp; Regional Conferences</b>		
2020 Mid-Year Council Meeting (IPBA Council Members Only)	Zoom	October 18-19, 2020
<b>IPBA Webinars</b>		
International Trade in a Time of Crisis	Zoom	September 7-8, 2020
Lawyers Working from Home Due to COVID-19: the New Normal?	Zoom	September 24, 2020
ICSID & UNCITRAL Draft Code of Conduct for Adjudicators in Investor-State Dispute Settlement	Zoom	September 28, 2020
Recent Trends in Foreign Investment Control: A Global Perspective	Zoom	October 22, 2020
Post COVID-19 Chinese Investments Benelux	Zoom	TBA
More details can be found on our web site: <a href="http://www.ipba.org">http://www.ipba.org</a> The above schedule is subject to change.		

# Deal-Making in Covid Times: The Rise of Telehealth

During the COVID-19 pandemic, the dramatic shift from in-person visits to telehealth services unveils what may be the new normal for providing healthcare services in Singapore and around the globe. This article discusses the new trend of telehealth use, the current legal framework in Singapore and potential legal issues arising from the provision of telehealth services.



## Introduction

During the coronavirus (COVID-19) pandemic, Singapore's circuit-breaker measures, which require Singapore residents to minimise movements and interactions in public and private places, have spurred patients and doctors to shift from in-person visits to telehealth services. The dramatic shift from in-person visits to telehealth services unveils what may be the new normal for providing healthcare services in Singapore and around the globe.

## Increased Interest in Telehealth

An increasing number of telehealth start-ups have managed to raise millions of dollars to accelerate their expansion, showing investors' appetite to find promising openings in the telehealth sector during the COVID-19 pandemic. Among Singapore-based telehealth start-ups that have received further funding during the COVID-19 pandemic is Doctor Anywhere, which raised \$27 million in late March in a series B funding round.<sup>1</sup> WhiteCoat, another telehealth provider, has seen the number of requests for chronic disease management services increase five times in the first quarter of 2020, compared to the same period last year, and, in MyDoc, the number of daily active users rose 60 per cent in February and doubled again in March 2020.

According to a report by Frost and Sullivan, the Asia-Pacific telehealth market could hit US\$1.79 billion by 2020, with an increase in annual growth rate of 12 per cent.<sup>2</sup> A consumer survey conducted by McKinsey & Company in April 2020 shows that up to 76 per cent of consumers surveyed are now interested in using telehealth going forward (compared to 11 per cent in 2019), and healthcare providers are reporting an

increase of 50x to 175x in the number of telehealth visits compared to pre-COVID.<sup>3</sup>

Incumbents in the healthcare industry are similarly ramping up services, with Raffles Medical Group partnering with telehealth start-up Doctor World to offer telehealth services via its Raffles Connect app,<sup>4</sup> and IHH Healthcare launching telemedicine services via MyHealth Connect app in late May.<sup>5</sup> Even outside of the healthcare industry, there has been an increased interest in ramping up services with OCBC Bank launching HealthPass in June, which provides access to over 100 general practitioners and specialists in collaboration with the Singapore Medical Group, Thomson Medical and OneCare Medical Group.<sup>6</sup>

The COVID-19 pandemic has also shown fresh use cases for telemedicine, such as to treat: (1) migrant workers or maritime workers who have limited access to physical clinics; (2) patients on a quarantine order or stay-home notice who are prohibited from leaving their place of residence; and (3) patients with mobility difficulties. Telemedicine apps could also enable follow-up consultations for patients, who have been recently discharged from the hospital, to enable early diagnosis and to provide intervention of certain conditions.

As an emerging industry, telehealth providers are still experimenting with various business models in the current fragmented landscape. For example, WhiteCoat chose to employ full-time doctors, while other telehealth providers, such as MyDoc, operate on a platform basis, where doctors on the platform may work physical clinical hours as well as consult digitally.

### Daily active users, March 2020 percentage increased vs. 2019 average

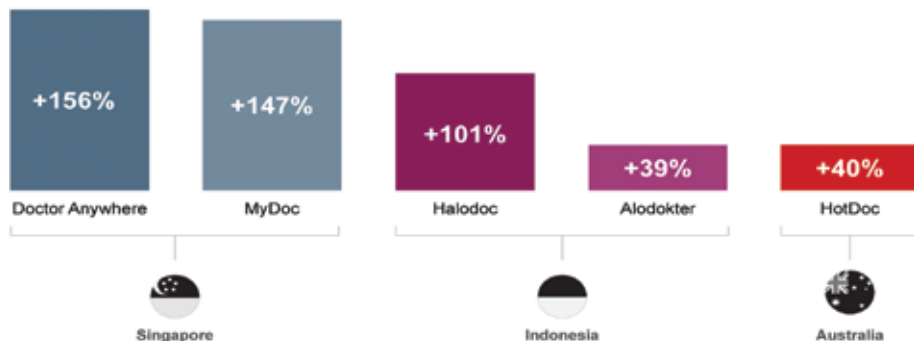


Figure 1: The number of telemedicine users in Asia-Pacific rose sharply in the first months of 2020.

Source: <https://www.bain.com/insights/covid-19-accelerates-the-adoption-of-telemedicine-in-asia-pacific-countries/>

Source: SimilarWeb

## Existing Legal Framework for Telehealth Regulatory Regime

Telehealth providers in Singapore are mainly focused on providing remote telemedicine and/or on-demand house call services. To date, there is no overarching legislation governing the telehealth sector in Singapore. The regulatory regime in Singapore revolves around a combination of various codes and guidelines, namely:

1. National Telemedicine Guidelines ('NTG')
2. Singapore Medical Council's Ethical Code ('SMC') and Ethical Guidelines ('ECEG') and Handbook on Medical Ethics ('Handbook');
3. Telehealth Product Guidelines by the Singapore Health Sciences Authority ('HAS') ('TP Guidelines'); and
4. Health Products (Licensing of Retail Pharmacies) Regulations ('HPR') and Telepharmacy Guidelines.

These will be discussed below.

### The NTG

The NTG contains guidelines such as:

1. The overall standard of care delivered by the system must not be any less compared to a service not involving telemedicine. The healthcare provider must be satisfied that the patient is suitable for a telemedicine interaction, that the standard of care delivered via telemedicine is reasonable, considering the specific context and that proper referrals and other necessary protocols should be put in place.
2. Due to the nature of a telemedicine encounter, there is an emerging necessity to be clear when a duty of care has been established and to ensure accountability for the care of the patient at all stages.
3. The patient must be given the freedom to make informed consent.
4. Licenseable healthcare professionals, delivering telemedicine services from or within Singapore, must be registered and licensed with the respective regulatory and licencing body.

5. As the NTG is a guideline for the industry, it must be noted that it has no force of law. It remains to be seen whether Singapore's Ministry of Health ('MOH') will impose sanctions on a healthcare provider or organisation for non-compliance with the NTG.

### ECEG and the Handbook

Effective from 1 January 2017, the SMC published examples of the requirements relating to telemedicine in the ECEG and the Handbook, which includes the following measures:

1. If doctors engage in telemedicine, they must endeavour to provide the same quality and standard of care as in-person medical care.
2. Medical certificates (including electronic MCs) must be issued to patients only on proper medical grounds arrived at via good clinical assessments. To make a diagnosis and offer a definitive opinion on management, which includes the need for MCs, doctors should rely on their professional judgment and on the required assessment, whether it is face-to-face or via video consultation.
3. Doctors must prescribe, dispense, or supply medicines only on clear medical grounds arrived at via sufficient clinical information. In the event that an online prescription is given to the patient following teleconsultation, doctors are to ensure that their patients are informed of the purpose for which the medicine was prescribed and the expected results.

All doctors in Singapore are obliged to comply with the ECEG. The Handbook supplements the ECEG by providing the rationale behind the ethical rules. Failure to meet the standards set under the ECEG may lead to disciplinary proceedings by the SMC.

### TP Guidelines

In 2019, the Healthcare Services Act ('HSA') published the TP Guidelines, which classify telehealth products that are intended for a medical purpose as medical devices. Such telehealth medical devices are regulated by the HSA, pursuant to the Health Products Act (Cap 122D) of Singapore and its subsidiary legislation. The regulatory approach adopted by the HSA is risk-based in that the level of scrutiny and regulatory requirements on a medical device will, in turn, be commensurate with its risk class (there are four risk classes: A, B, C, and D). It is



also confidence-based regulation by leveraging on the reference agencies' approval or prior safe marketing history of the medical devices.

### **LEAP Sandbox**

To better understand the operating environment and challenges of the growing telemedicine industry, the MOH collaborated with prominent telemedicine service providers to launch a regulatory sandbox in 2018. This regulatory sandbox initiative titled the Licensing Experimentation and Adaptation Programme ('LEAP') creates room for dialogue between telemedicine providers and the regulators, while the MOH continues to develop and refine the regulatory framework.<sup>7</sup> As of July 2020, there are 11 active sandbox providers, namely: WhiteCoat, MyDoc, Doctor Anywhere, Speedoc, MaNaDr, SATA Commhealth, Doctor World, Parkway Shenton, Better Health, HiDoc and Rescu.

### **New Regulatory Framework under the Healthcare Services Act by End of 2022**

In January 2020, the MOH announced that the telemedicine sector would be licensed in the upcoming HSA by the end of 2022. The MOH takes a risk-based approach towards regulations and will focus on licensing

doctor-led teleconsultation and on-demand house call services that provide direct clinical care, such as triage, history taking, diagnosis and treatment. The LEAP sandbox will exist up until the point of the upcoming HSA licensing, after which all telehealth providers will have to comply with the prevailing legal and regulatory requirements. Pursuant to the HSA, healthcare providers will be licensed based on the type of services they provide, instead of being licensed based on their physical premises, pursuant to the current Private Hospitals and Medical Clinics Act (Cap 248) of Singapore, which is premise-based.

To manage the impact of COVID-19, in May 2020, the Infocomm Media Development Authority and Enterprise Singapore expanded the range of pre-approved teleconsultation digital solutions and announced grants and subsidies to encourage small and medium-sized healthcare providers to adopt these solutions. The pre-approved solutions qualify for up to 80 per cent subsidy from the Productivity Solutions Grant until 31 December 2020.<sup>8</sup> The support for small and medium sized-healthcare providers to adopt digital solutions, including teleconsultation, will support the transition by healthcare providers during the COVID-19 pandemic and beyond.

## Potential Legal Issues Arising from Telehealth Challenges

As this is an emerging industry in Singapore, there are some unique challenges faced by telemedicine service providers. Until the implementation of the upcoming Healthcare Services Act, telehealth providers in Singapore should take note of the following issues.

### Ensuring Its Medical Doctors are Qualified to Provide Medical Advice in Singapore

An important issue would be how to ensure that the medical doctors providing telemedicine services are adequately qualified. In the parliamentary debates regarding the upcoming Healthcare Services Act on 6 January 2020 ('the *Hansard*'), Senior Minister of State Mr Edwin Tong, who spoke on behalf of the MOH ('Mr Tong'), made it clear that, while the upcoming Healthcare Services Act does not have extraterritorial powers, if the telemedicine providers provide services which are received in Singapore, regardless of whether the provider is based in Singapore or overseas, then those services would have to be licensed under the upcoming Healthcare Services Act, and all doctors (based in Singapore or overseas) employed by the telemedicine provider must be registered with the SMC.

Accordingly, telemedicine services in Singapore can only be provided by the SMC registered medical doctors under the Medical Registration Act ('Registered Doctors'), regardless of whether the provider is based in Singapore or overseas. Registered Doctors are to abide by the ECEG, Handbook and NTG when providing telemedicine services and complete a mandatory online course on telemedicine. The online course was introduced by the MOH in March to guide doctors on designing and delivery of telemedicine services that prioritise patient safety and welfare. As of 13 April 2020, 955 medical practitioners and healthcare staff have completed the course.<sup>9</sup>

Registered Doctors should ensure that they: (1) are properly trained in the use of communication platforms or telehealth devices; (2) have acquired sufficient patient information; and (3) convey to patients the nature of remote telemedicine services and its limitations. In prescribing medication and medical certificates remotely, Registered Doctors are to rely on their professional

judgement in each case and only do so if it is in the patient's best interest. Overall, Registered Doctors providing telemedicine care are required to provide the same quality and standard of care as in-person medical care. Otherwise, the limitations must be stated in the opinion and be communicated to the patient, such that the patient understands any limitations of telemedicine that may affect the quality of their care in relation to their specific circumstances.

Registered Doctors providing telemedicine care are required to provide the same quality and standard of care as in-person medical care.

In view of the surge in usage of telemedicine services during the COVID-19 pandemic, in February 2020, the Singapore Medical Association Telemedicine Workgroup also published an advisory regarding 'Leveraging on Telemedicine during an Infectious Disease Outbreak'.<sup>10</sup>

The main limitations with telemedicine identified in the advisory include: (a) the inability to perform a physical examination; (b) lack of visual and other cues of the patient's condition when compared to an in-person consult; and (c) technological limitations, such as image quality, transmission lag and data breach.

To protect patients from being misled by unqualified providers, as mentioned by Mr Tong in the *Hansard*, the MOH will investigate and take appropriate actions if unqualified providers are found to have provided healthcare services. Under the upcoming Healthcare Services Act, the MOH may also publish information, such as a list of unlicensed providers and non-compliant licensees and by making such information available to the public, it can help patients make more informed decisions.

### Uncertainty Regarding Legal Liability in Respect of Medical Malpractice or Negligence

There has not yet been a case involving telemedicine malpractice or negligence in Singapore. If telemedicine providers decide to engage the services of freelance Registered Doctors, it is currently unclear who bears the legal responsibility for any malpractice or negligence. In assessing legal responsibility, the Singapore court is likely to consider whether the Registered Doctor was an employee or contractor of the telemedicine provider. To mitigate such risks, telemedicine providers may consider employing their own Registered Doctors who maintain the requisite malpractice or negligence insurance or



maintain such insurance on their behalf. For claims made against overseas telemedicine providers, the Singapore court may have to assess whether it has the jurisdiction to hear the claim on: (1) Singapore's connection to the dispute; and (2) whether there would be a denial of justice by hearing the claim in Singapore. As different jurisdictions have different approaches in dealing with the area of medical negligence, there could be uncertainty in determining the proper jurisdiction to hear the medical malpractice or negligence case in the event that the freelance Registered Doctor is in one country and the patient is in Singapore.

### Data Privacy and Data Transfer Issues

Personal data in Singapore is protected under the Personal Data Protection Act ('PDPA'), and healthcare providers should take note of the specific advisory guidelines drafted for the sector. Telemedicine and telehealth providers that collect any medical or personal data have the obligation to make reasonable security arrangements to prevent unauthorised access, collection, modification, disposal or similar risk of a patient's personal data, including a patient's medical data / records.

The Personal Data Protection Commission's decision in *Singapore Health Services Pte. Ltd. & Ors*<sup>11</sup> highlights the factors that are taken into account in assessing the

reasonableness of security arrangements to include the following: (1) the nature of the personal data; (2) the form in which the personal data has been collected (physical or electronic); and (3) the possible impact to the individual concerned if an unauthorised person obtained, modified or disposed of the personal data. In this regard, unlike other forms of personal data, medical personal data of patients is regarded as sensitive personal data and demands a higher standard of protection. Therefore, telehealth providers are to ensure that there are sufficient and secured security measures when storing patients' personal data (on physical or online cloud servers).

This requirement of protection extends to teleconsultation platforms used by the Registered Doctors when attending to their patients. Certain video conferencing apps, such as Zoom, have been reported in the media for having security and privacy vulnerabilities, leading to practices such as Zoom-bombing or leakage of personal data. Telehealth providers, accordingly, should be mindful of such cybersecurity risks posed by the platforms they use and should exercise caution in choosing third-party providers (if any) who provide sufficient security measures.

If the telehealth provider is based overseas, that telehealth provider should also be mindful of whether the platform is able to collect personal data in Singapore



and export it out to its server overseas. Under the PDPA, transfer of personal data to a recipient in a country or territory outside of Singapore is prohibited, unless the recipient is bound by legally enforceable obligations to provide to the personal data transferred a standard of protection that is comparable to that under the PDPA. In this regard, legally enforceable obligations include obligations imposed on the recipient under: (a) any law; (b) any contract; and (c) any binding corporate rules. Accordingly, any telehealth provider who is intending to transfer data outside of Singapore to a jurisdiction with a standard of protection that is lower than that under the PDPA should consider entering into a data transfer agreement to impose legally enforceable obligations on the recipient to provide to the personal data transferred to the recipient a standard of protection that is at least comparable to the protection under the PDPA.

### Other Regulatory Guidelines Regarding Telehealth Products

Service providers are to take note of the TP Guidelines if they are importing or developing devices or technologies for the purpose of investigation, detection, diagnosis, monitoring, treatment or management of any medical condition, disease, anatomy or physiological process. For providers intending to provide telepharmacy services—they are to adhere to the HPR, the Telepharmacy Guidelines issued by the Pharmaceutical Society of Singapore and obtain the necessary approval from the HSA.

### Use of Artificial Intelligence

In addition to telehealth services via digital consultation with doctors, new technologies such as artificial intelligence ('AI') to diagnose illnesses for telehealth introduce further uncertainty on the question of liability for decisions made by the AI. As stated by Mr Tong in the Hansard, the MOH is aware of the increasing role and importance of AI in healthcare. As it is an evolving area, the MOH is monitoring AI closely and engaging the relevant stakeholders, such as AI developers and AI users, to find the best possible guidelines and develop them in tandem with the healthcare industry to ensure patient safety.

### Concluding Remarks

The COVID-19 pandemic pushes regions around the world, including Singapore, to quickly adapt to utilising telehealth services as a means to prevent possible exposure to COVID-19 and to allow critical patients to get the in-person care they would need without in-

person visits. The surge of interest in this sector provides opportunities for investors and players to develop the nascent industry via investments and collaborations. That said, as this sector is an emerging industry, any investments and deals in this sector should tread with caution and bear in mind the aforementioned legal issues which may impact the business models and deal structures. The upcoming Healthcare Services Act, which seeks to licence the provision of telehealth services, is greatly welcomed to provide a greater certainty in this growing sector. However, in the meantime, players will have to grapple with the unique challenges presented and mitigate the risks as much as possible.

### Acknowledgements

The author would like to thank Bernard Lui and Claudia Tan for their assistance and contributions with this article.

### Notes

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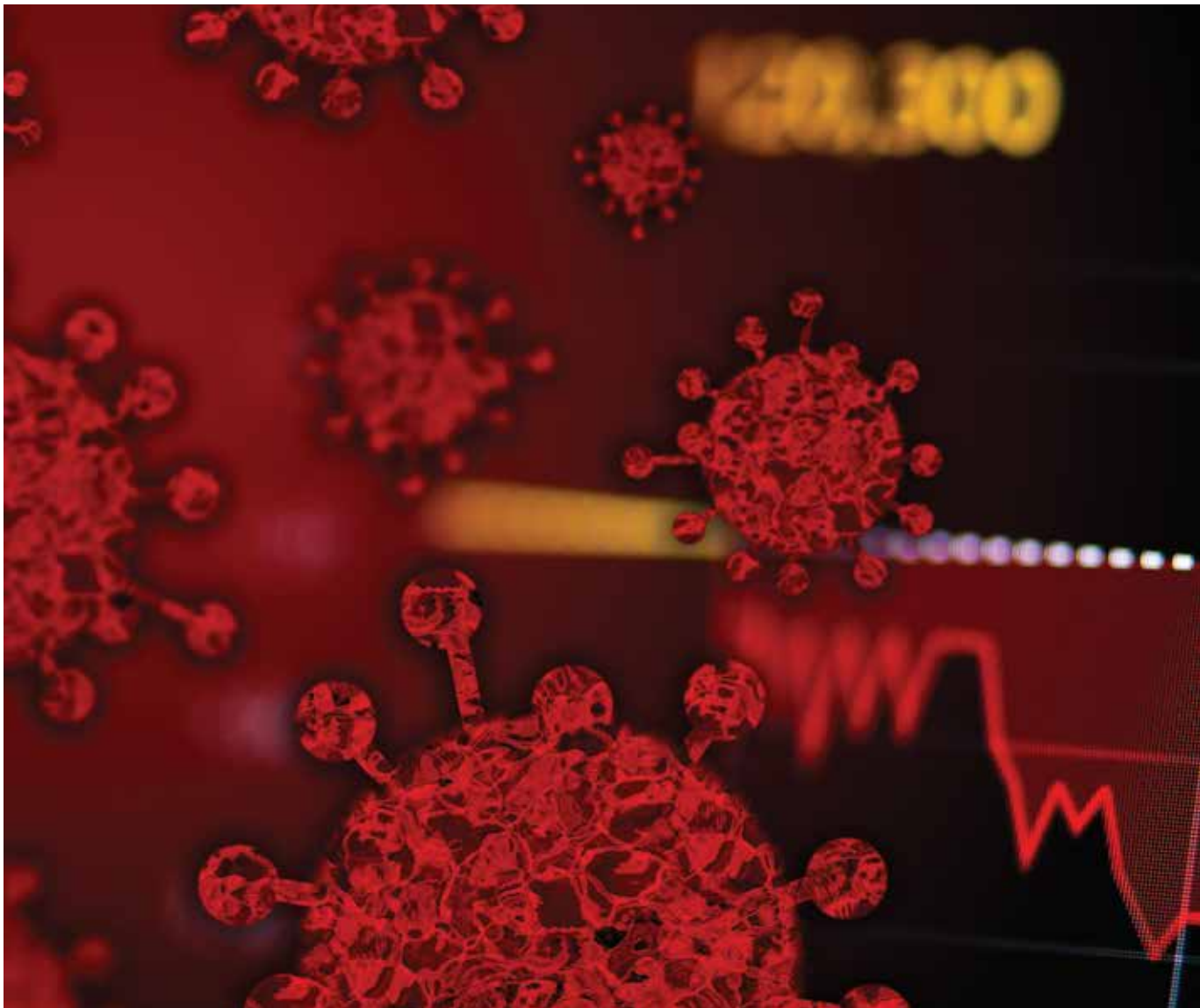


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# Deal-Making in COVID Times: New Trends in Private M&A Deals

COVID-19 has now mutated into an economic crisis. Albeit issues in transactions are specific, in the current environment there are certain emerging trends and areas of concern that are discernible in private M&A deals. This article provides an overview of these trends and issues which parties could consider negotiating in the early stages of a transaction.



## Introduction

The global spread of COVID-19 has had widespread impact on international business, financial markets and business operations. The outbreak, which started as a humanitarian crisis, has now mutated into an economic crisis as well, which has further worsened in India owing to the imposition of stringent lockdowns, social distancing norms, self-isolation measures and a bar on international travel.

Since liberalisation of its economy in 1991, India witnessed one of its worst quarters in January-March 2020 as the Nifty 50 fell by 29.3 per cent and the Sensex slipped by 28.6 per cent<sup>1</sup>. Deal making in India fell by more than a third in fiscal 2020 to US\$82 billion,<sup>2</sup> with inbound

investments being the most affected. However, outbound and domestic deal spaces have witnessed a surge as compared to the 2019 levels. In fact, local consolidation formed more than half of the M&A activity in fiscal 2020.<sup>3</sup> Moreover, Indian deals, in the first quarter, acquired a market share of 15.4 per cent in the APAC region, almost at par with 2019 levels.<sup>4</sup> Therefore, while M&A activity in India has been on the decline, it is still active and, in fact, it is anticipated that there will be an accelerated momentum in deal activity in the next six months.

Private equity investors who are astraddle a record pile of 'dry powder', may emerge as prominent players in the M&A space in India, as they will consider investigating specific investment opportunities and capitalising their existing portfolio companies. Even the sovereign wealth funds that usually have a long-term and strategic investment perspective may probably continue with their investment plans in India. From a sectoral perspective, certain sectors such as tech space, health care and infrastructure will see a surge in deal-making activity, but other sectors like industrial and travel will be hit by disinvestment and distressed sales.

Typically, issues in any transaction are specific and bespoke to such transaction as it depends on various factors such as investment amount, reputation, sector, historical issues and bargaining power. However, in the current environment, there are certain emerging trends and areas of concern that are discernible with respect to private M&A deals and this article provides an overview of these new trends and concerns. Some of the issues may be of greater significance depending on the stage of the transaction and the form of M&A being pursued.

## Emerging Trends in Deal Structuring

Difficulty in assessing the gamut of defaults and liabilities of a seller's business, asset deals may be incentivised as they permit investors to 'cherry-pick' the assets and ring-fence against potential concerns and risks by excluding them from the scope of the transaction. Even from a legal standpoint, successor liability exposure of investors is limited in asset deals as compared to a 'slump sale' or a stock purchase deal. Moreover, even with respect to the limited successor liability exposure that an investor may face on account of unpaid tax dues of the seller or claims from disgruntled employees, there are various mitigating steps that may be considered and implemented.

4.86

Since liberalisation of its economy in 1991, India witnessed one of its worst quarters in January-March 2020.

Another important trend emerging from the changed outlook of investors in the current environment is that as they are shying away from pure play equity investments which could yield higher returns and are instead poised to invest in interest bearing convertible instruments to ensure sufficient downside protection before a conversion option is exercised. In this context, investors may also consider a blend of convertible and non-convertible instruments to provide an 'adequate adjusted return'.

With respect to distressed M&A, a moratorium has been imposed on the initiation of proceedings under the (Indian) Insolvency and Bankruptcy Code, 2016 ('IBC').<sup>5</sup> Even the anticipated rapid 'fire sale' of assets has not been witnessed yet in the Indian market. Further, once the suspension on initiating IBC proceedings is lifted, it will be interesting to witness the pace at which relevant tribunals are flooded with such cases and the principles that may emanate from such cases.

Currently, while there are various informal out-of-court restructuring processes and frameworks notified by the Reserve Bank of India,<sup>6</sup> none of them have any statutory backing and bind only those who explicitly consent to it. To resolve this, the Government is deliberating on introducing a pre-packs mechanism ('pre-packs'),<sup>7</sup> which, as it stands at present, is not permitted under the IBC. The broad contours of pre-packs in western jurisdictions include out-of-court settlements entered into between consenting creditors and the debtor, which upon approval of the court or tribunal, become statutorily binding on all creditors of the debtor. As pre-packs are less time consuming, more cost effective and provide more flexibility to parties, we may see substantial pre-packs deals on the distressed M&A side, once permitted under law. However, legislatures will need to be mindful of not enforcing overly prescriptive pre-packs governing regulations, thus stifling the fundamental advantage of this mechanism, that is, providing flexibility to parties.

Moreover, any deals involving investments from outside India will face heightened scrutiny and increased government intervention on grounds of national security and to thwart the efforts of opportunistic neighbours from making acquisitions in India.<sup>8</sup> This broad and rather ambiguous mandate was imposed by the Government recently by amending the foreign exchange regulations and has 'dampened' investor sentiment. To circumvent this issue, non-resident investors may look to incorporate companies in India to ensure that deals fall outside the

purview of the foreign exchange regime. However, the effectiveness of this solution is yet to be tested. Further, at a macro-level, rising protectionism may nudge businesses to build regional sufficiency, thus leading to greater opportunities for domestic investors.

### Emerging Trends and Issues on Valuation, Price-Adjustment and Credit Worthiness

Valuation, which depends on various assumptions, forecasts and market factors, has been impacted by multiple economic and geo-political issues, across sectors, such as declining consumption, increased unemployment, impending global recession, increased volatility of financial markets, disruption in capital



formation and supply chains, coupled with rising border tensions with China. Consequently, sellers are increasingly facing 'repricing risk' as investors are inclined to factor in the impact of COVID on a seller's business.

As investors are likely to face substantial challenges in factoring the pandemic's impact on business and, consequently, valuing the seller's business with a degree of accuracy and reliability, the locked box mechanism will likely give way to a post-completion adjustment mechanism or elements of contingent consideration. Such mechanisms may include investment in tranches, deferred consideration, retentions, earnouts, call or put options, escrows and milestone-based conversions. However, the

commercial effectiveness of these structures will need to be stress tested against the restrictions imposed by the Reserve Bank of India.<sup>9</sup> Even for investments or acquisitions based on the locked box mechanism, investors will emphasise on valuing the business on the basis of special purpose accounts, which will be prepared in accordance with agreed methodologies under the acquisition agreement. Inclusions and exclusions, protocols, methods and timelines for each valuation mechanism will be subject to detailed and meticulous negotiations.

We may witness sellers securing an investor's payment obligation through various mechanisms, such as procuring a guarantee from an investor's parent or



group entities. On the other hand, investors may want to insure the risk of breach of warranties by sellers by procuring R&W insurance. As compared to jurisdictions such as the US, UK and Australia, R&W insurance is still at a nascent stage in India. However, despite being at an early stage, demand for such R&W insurance is witnessing an increase. Marsh JLT Specialty reported that policies placed in Asia has seen a 40-65 per cent year-on-year increase since 2015.<sup>10</sup> In future, lesser policy exclusions, increased expertise in relation to this sophisticated product, precedence of large pay-outs under the policies and competitive pricing resulting in reduced premiums may render this product a viable and attractive alternative to the expensive dispute resolution process.

### Impact of COVID on M&A Documents

Given the uncertain and changing environment, many of the provisions of M&A documents are likely to be fiercely contested and subject to protracted negotiations. We have identified certain key provisions below:

(1) *'Laundry list' of conditions to completion*: Investors may consider using conditions to deal completion as a useful tool to address the outbreak related risks and to sidestep transactions, if required. For instance, procuring keyman insurance (in addition to D&O insurance) or business interruption cover, re-opening or continued operations of target's facilities for an uninterrupted period of time, continuing of key supplier/customer contracts and even anticipated risks such as no second wave of the outbreak having occurred are a few examples of conditions that may be mentioned in deal documents.

(2) *Additional oversight prior to completion*: The typical approach of investors to seek assurance on the continuation of business in the ordinary course between signing and closing will probably need to be reassessed. Investors may want additional oversight of a seller's business to control the actions implemented in response to situations arising due to COVID. However, this will need to be tested against the anti-trust law principle of 'gun jumping' to ensure it does not trigger any regulatory issues. Further, sellers may want flexibility in dealing with COVID-related emergencies and not to provide overarching powers to investors. Parties will need to carefully assess whether certain pre-completion covenants may conflict with a seller's need to respond to the outbreak.

(3) *Warranties and disclosures*: We may witness a rise in the practice of investors expanding the scope of

the warranties to cover potential issues stemming from the outbreak. This may also be a tactical approach to elicit disclosures from the seller, which would otherwise not have been covered within the scope of the due diligence exercise and will be justified under the pretext of apportioning correct and accurate risk among the parties. The seller, on the other hand, will prefer to restrict speculative/forward looking warranties, add awareness/materiality qualifiers, ring-fence wide-ranging warranties and maximise disclosures. Certain sellers may even take a stringent stance of negotiating a limitation on liability against any loss arising due to the outbreak.

(4) *Material adverse change ('MAC')*: In India, MAC 'outs' are not automatic rights that may be asserted by a party under law. The efficacy of these 'contractual outs' depend on the language agreed between the parties under the contractual arrangement. For instance, whether the MAC is linked to a market or financial condition, whether the materiality thresholds are defined and based on objective criteria and the agreed carve-outs, will drive the usage of the MAC. While there is a paucity of case law on this provision, the principles that may emerge once this is tested in court will have important ramifications on M&A documents.

(5) *Anti-dilution*: Given the reality of falling valuations, the earlier tick-in-the-box anti-dilution provision will likely be heavily negotiated by investors, as they will be keen in procuring full-ratchet protection.

(6) *Change in law*: New legal amendments, modifications and measures are being promptly announced by the government. Given this, parties will be keen to negotiate and contest the allocation of risk basis a change in law.

(7) *Protracted deal timelines*: As government offices in India continue to struggle with staffing issues and are majorly expending resources and time on addressing the outbreak, deals requiring anti-trust review or other forms of government approval are facing countless delays. With respect to anti-trust review, parties could consider pursuing the fast-track approval route through 'green channel' filing or taking the defence of 'failing firm', to hasten the approval process, but it will largely depend on the deal dynamics. Given this, investors may want to negotiate robust termination rights and 'outs' at various stages of the transaction while the sellers will want 'deal certainty' by imposing an execution risk on investors. However, other issues such as remote signing

and stamping of documents are not major time barriers as e-signatures have been specifically recognised under Indian law<sup>11</sup> and have been enforced by courts in various instances<sup>12</sup> and stamp papers may be purchased online from recognised vendors. Further, for share acquisition deals, the Government has recently centralised the stamping mechanism and applied uniform stamp rates for issuance and sale of various securities, thereby further easing the process.<sup>13</sup> Even for shareholder meetings and board meetings, the law has been amended to permit such meetings to be conducted through video conference or other audio-visual means and members are permitted to e-vote on the resolutions.<sup>14</sup>

### Due Diligence Considerations

Investors will want to carry out detailed due diligence of a seller's business in light of the outbreak with focus on specific areas, which will vary based on the nature of the transaction. The new and potential areas of concern will include:

*(1) Impact of COVID on business:*

This will assist investors in ensuring that the impact of Covid is factored into the valuation or otherwise adequately achieved by the warranty and indemnity package. We have seen certain instances of investors sharing a set of focused questionnaires for assessing the impact of COVID on a seller's business. Based on this, a preliminary due diligence is conducted prior to a full-fledged diligence and negotiation exercise. This may become the norm going forward.

*(2) Governance:* Assessment of the robustness of a seller's pandemic preparedness, cash conservation policies and business continuity and crisis management planning will be undertaken to understand if the seller is well equipped to handle sporadic lockdowns in India and a second wave of the pandemic, if such occurs.

*(3) Employment:* The number of employees that were laid off or furloughed during the pandemic, the state of a seller's compliance with social distancing norms and other government directives, any labour disputes threatened or initiated due to termination of employment, steps undertaken towards the health and safety of the employees, benefits committed to the

employees and terms and conditions of employment will be deftly scrutinised.

*(4) Financial arrangements:* Financing documents will be reviewed to understand if any of the covenants under such documents have been breached or any circumstances have arisen which will permit the lender to accelerate loan repayment or a claim a breach of contract. Accordingly, appropriate remedial actions will be suggested and prescribed by the investor.

*(5) Contracts:* The extent of exposure to supply chain disruption and the ability of the seller to source alternatives will be assessed thoroughly. In this process, the power of the seller to invoke MAC under the supply arrangements will also be assessed. With respect to customer contracts, investors will assess if customers of the seller have invoked, or have the ability to invoke, force majeure under their agreements with the seller.

*(6) Intellectual property:* Given that most of companies have adopted a work from home policy and COVID has augmented or supplemented the adoption of technology at a rapid pace, the IT systems setup by sellers will be assessed from the perspective of adequacy to adapt to new technology and ability to protect intellectual property.

*(7) Data protection:* While there is no dedicated legislation in India addressing the issues pertaining to 'data privacy' and 'data protection', the IT Act, read with Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules 2011, are the primary legislation that deal with the protection of sensitive personal data. Data collection of employees, customers or any third party through temperature recording and thermal screening, self-declaration medical forms, etc., constitute sensitive personal data and, consequently, such information will need to be collected, stored and disseminated in compliance with the aforementioned laws. Further, businesses which involve collection of data of individuals below 18 years of age, such as ed-tech businesses, will need to be especially mindful of legal compliances as the upcoming Personal Data Protection Bill 2019, modelled on the EU General Data Protection Regulation ('GDPR'), includes significant protections in this regard.

Many of the provisions of M&A documents are likely to be fiercely contested and subject to protracted negotiations.

The compliance and readiness of the seller in respect of the adherence to data protection laws may be a critical determination for many sectors.

(8) *Integrity diligence*: Diligence on the breach of prevention of corruption, anti-bribery and anti-money laundering laws by the target or its authorised representatives will be assessed to ensure relevant risks are identified as white-collar delinquency during distressed times tends to be underreported.

(9) *Insurance*: Review of existing insurances and assessing the need for business interruption insurance or health insurance for employees will be immutable.

## Conclusion

COVID-19 has undoubtedly sent shockwaves across the market and M&A has been adversely affected due to this pandemic, but it will be naïve to think that this has stalled deal-making in India. India will continue to be an attractive deal destination for investors. COVID will also undoubtedly influence risk allocation and other provisions in M&A transactions. Parties need to be mindful of the aforementioned considerations while shaping their deals. As most of these points are likely to be hotly contested, parties may consider forming in-principle understanding on some of these points in the early stages of the M&A transaction and reflect them in the heads of terms document, in order to reduce deal time and manage deal costs.

## Notes

<sup>1</sup> Deepak Korgaonkar and Puneet Wadhwa, 'Covid-19: Sensex Posts Biggest Quarterly Fall, Nifty's Worst in 28 Years', Business Standard (New Delhi, 1 April 2020).

<sup>2</sup> Reebah Zacharia, 'M&As in India Dive by 36% to \$82 Billion in FY20', Times of India (Mumbai, 30 April 2020).

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> Insolvency and Bankruptcy Code, Amendment Ordinance 2020, s 2.

<sup>6</sup> Reserve Bank of India, 'Prudential Framework for Resolution of Stressed Assets' (RBI Notification, 7 June 2019).

<sup>7</sup> Shayan Ghosh and Jayashree P Upadhyay, 'Government May Introduce Pre-packaged Deals in IBC to Mitigate Covid-19 Delays', Livemint (Mumbai, 6 May 2020).

<sup>8</sup> The Department for Promotion of Industry and Internal Trade ('DPIT') has issued Press Note 3 of 2020 Series ('PN3') amending the extant Foreign Direct Investment policy ('FDI Policy') for curbing opportunistic takeovers/acquisitions of Indian companies due to the pandemic. Pursuant to the PN3, among other things, a non-resident entity from a country, which: (1) shares a land border with India; or (2) where the beneficial owner of an investment into India is situated in or is a citizen of any such country, can invest only under the government approval route.

<sup>9</sup> Under the FDI Policy, the RBI allows up to 25% of the total consideration in transactions involving residents and non-residents to be deferred. Such deferred purchase consideration must be paid within a period of 18 months from the date of the agreement. Similar restrictions apply to escrow

arrangements and indemnity payments. Further, the total consideration finally paid to / by the non-resident must be compliant with the applicable pricing guidelines.

<sup>10</sup> Marsh JLT Specialty, 'Insights Into W&I Insurance Claims in Asia: What Half a Decade of Data Tells Us', (Insights, April 2020), available at [www.marsh.com/hk/en/insights/research/warranty-indemnity-claims-half-decade-data.html](http://www.marsh.com/hk/en/insights/research/warranty-indemnity-claims-half-decade-data.html) (accessed 17 July 2020).

<sup>11</sup> Information Technology Act 2000 ('IT Act'), ss 3, 3A, read with Sch 2.

<sup>12</sup> Tamil Nadu Organic Private Ltd v State Bank of India AIR 2014 Mad 103 (Madras HC).

<sup>13</sup> Ministry of Finance, 'Implementation of Amendments in the Indian Stamp Act, 1899 and Rules Made From 1st July 2020 for Rationalized Collection Mechanism of Stamp Duty Across India With Respect to Securities Market Instruments' (Press Information Bureau, (30 June 2020).

<sup>14</sup> Ministry of Corporate Affairs, 'Clarification on Passing of Ordinary and Special Resolutions by Companies and the Rules Made Thereunder on Account of Covid' (General Circular No 14/2020, 8 April 2020); Ministry of Corporate Affairs, 'Clarification on Passing of Ordinary and Special Resolutions by Companies and the Rules Made Thereunder on Account of Covid', (General Circular No 17/2020, 13 April 2020).



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# Deal-Making in COVID Times: Challenges and New Trends in Inter-Governmental and Private Party Deal-Making Process

● ● The COVID-19 health emergency and the restrictions imposed by governments to keep the pandemic under control has created significant challenges for economic activities that may change the way we source, negotiate and close transactions going forward. In this article we evaluate and analyse some of the challenges and trends in the deal-making process that arose as a result of the COVID-19 pandemic at the governmental and private sector level and which are likely to redefine the deal-making process in the coming years.



## Inter-Governmental Transactions

As should be obvious, the pandemic has created massive shortages of essential medical equipment, which has caused many countries to resort to restrictive trade policies to maintain adequate supplies. While some countries have adopted export restrictions on personal protective equipment ('PPE') and other essential products such as foodstuffs,<sup>1</sup> other countries have reduced tariffs on these products and other goods.<sup>2</sup> International trade has played an important role during the ongoing COVID-19 pandemic and plenty of international trade 'deals' between various parties and entities have continued to occur, despite the initial interruptions.

At the governmental and inter-governmental level, many governments have been busy with continued negotiations on ongoing free trade agreements ('FTAs') and preferential trade agreements commenced before the outbreak began and/or initiated during the outbreak. In the United States ('US'), for example, after more than 26 months of negotiations and political haggling leading to its ratification, the United States-Mexico-Canada Agreement ('USMCA') finally went into force on 1 July 2020, superseding the North American Free Trade Agreement ('NAFTA').<sup>3</sup> Similarly, in February 2020, the US Government announced its intention to initiate a free trade negotiation with Kenya.<sup>4</sup> On 8 July 2020, the two nations officially launched the negotiations of their bilateral trade agreement with the first round of negotiations being conducted virtually due to COVID-19.<sup>5</sup> Similarly, even amidst the current trade tensions between the US and China, which has been exacerbated to a large degree by COVID-19, China has continued to meet its obligation under the Phase 1 trade deal signed on 15 January 2020 with the US.<sup>6</sup>

On the other side of the pond, following the official withdrawal ('Brexit') of the United Kingdom ('UK') from the European Union ('EU') on 31 January 2020, the UK commenced two parallel FTA negotiations with the US and the EU. With regard to its negotiation track with the US, the US-UK trade negotiations aimed to address tariff and non-tariff barriers to trade in goods, services and agriculture, investment and government procurement, as well as trade-related rules.<sup>7</sup> The first two rounds of virtual negotiations were conducted in May and June 2020, with success, and further rounds of negotiations are planned for later this year.

With regard to the UK-EU negotiations, the political declaration attached to the UK-EU withdrawal



agreement envisioned 'an ambitious, broad, deep, and flexible partnership across trade and economic cooperation with a comprehensive and balanced Free Trade Agreement at its core.'<sup>8</sup> It is within this prism that the negotiations have been conducted. Although the COVID-19 pandemic initially stalled negotiating progress, negotiations have resumed, oscillating between virtual and in-person negotiation and the UK has earmarked September 2020 as its anticipated deadline to conclude a new trade deal.<sup>9</sup> This proposed deadline would fall well in advance of the transition period deadline, where EU trade agreements would continue to apply to the UK.<sup>10</sup>

The UK has also been working to replicate existing EU trade deals with non-EU countries. The EU has more than 40 trade agreements with about 70 countries. As of July 2020, the UK had signed continuity deals covering over eight per cent of total UK trade with close to 50 countries or territories, including Central America, Andean



The UK has also been working to replicate existing EU trade deals with non-EU countries.

Countries, Morocco and Israel.<sup>11</sup> In addition, the UK is currently negotiating mutual recognition agreements ('MRAs') to assure continued acceptance by the UK and partner country regulators of each other's product testing and inspections in specific sectors.<sup>12</sup>

**Private Sector Transactions**

At the private, business-to-business level, there also continue to be significant business activities, although to a lesser degree than prior to the COVID-19 outbreak. However, COVID-19 disruption has raised new issues relating to the performance and enforcement of trade deals.

The first of these issues relates to whether the outbreak could be considered an unforeseen event that could be argued to fall under the force majeure clause of a legally binding contract. Specifically, to prevent the spread of COVID-19, many governments around the world mandated strict lockdowns and quarantines of

all non-essential businesses, ports, airports, government buildings, etc., which made it significantly difficult for some parties to fulfil their obligations under the contract; although, in some limited circumstances some of the delays were temporary and did not prevent full performance. For example, these disruptions included: couriers not picking up or receiving original documents due to a lack of international transportation, thus putting on hold all downstream transactions that could have been completed had the originals documents been mailed; and the apostille and legalisation process delayed as public offices were closed during the outbreak peak, thus being unable to process documents required for the closing of transactions.

These logistical and payment issues caused by COVID-19 raise the question whether counsel could argue force majeure as a defence to non-performance. For example, under Uruguayan law, a force majeure event needs to

be external and not attributable to the debtor. Similarly, Uruguayan law provides that a closure of a bank is a defence to non-payment of debt due. However, most of the banks in Uruguay continued to operate during the worst period of the outbreak, although at a significantly limited capacity. For example, a transaction that would have been relatively easy to complete prior to the outbreak took significantly longer due to shortened work hours and closures of government buildings. The inability for a debtor to pay their debt obligation at the specified time in the contract due to a slowdown in bank operations, while not a complete closure, raises the issue of whether such a significant slowdown in bank operations would in effect constitute a closure. These issues are still being litigated in the Uruguayan court systems.

As many companies now face significant difficulties to make payments as they become due and to comply with their obligations under their existing financial indebtedness, many companies have begun to request access to some form of government support to continue to operate their businesses. Some companies have also had to reach out to creditors to request waivers, extensions or standstills in connection with maturing payment obligations and covenants under their financing agreements. In some limited cases, companies have also requested protective measures from courts based on force majeure or similar clauses or doctrines to prevent default scenarios.

Although there have been severe delays in M&A and financing transactions, a substantial number of deals that were between post-signing and pre-closing managed to close as those deals were essentially concluded. However, as COVID-19 may have impacted the valuation of some of these companies prior to closing, another issue, the so-called Material Adverse Change ('MAC')/Material Adverse Effect ('MAE') arose needing to be resolved prior to the closing of the deal. A MAC/MAE is generally described as a change in circumstances that significantly reduces the value of a company.

Many M&A lawyers all over the world continually struggle to define what should or should not be considered a material adverse change. This has caused many lawyers to resort to general template clauses, such as: 'Material

Adverse Effect' means an effect, event, occurrence or change which, individually or in the aggregate, is or would be materially adverse to the financial condition or results of operations of the Company.' As lawyers cannot agree on a wording that could be acceptable to both parties, oftentimes they tend to write catch-all and broad clauses. This has made the application of such clauses difficult to enforce as judges and arbitrators need to interpret the real intentions of the parties and subjectively determine whether an outbreak such as COVID-19 can or cannot

be considered a MAC/MAE. It is quite possible that this will result in increased litigation between creditors and borrowers in the coming months and years. What is clear is that new clauses will be added to financing agreements that would address in more detail risk allocation among creditors and lenders in uncertain scenarios such as COVID-19.

As COVID-19 has and is disrupting the way many deals have traditionally been transacted and financed, regulations and supervision of financial institutions will need to adapt to the ongoing and unexpected stressed scenarios: long periods of low interest rates; new operational risks arising from the pandemic; and an increased need for digital transformation. Operational disruptions have brought to light the need to automatise and decentralise certain processes and transactions that take place in the financial and capital markets. In this context, the implementation of blockchain-based solutions and the use of crypto assets may be accelerated. However, given that the financial industry is highly regulated, many of these innovations will likely require regulatory changes that allow for their use and provide for oversight of the new risks they create.

Similarly, state aid regulations are being adjusted and developed to allow governments to support the private sector through investment or financing instruments. Further, public interest policies and projects are being developed in most jurisdictions in collaboration with the private sector, for example, to support industries and develop environmental and social projects and infrastructures. As a result, this would result in new laws and regulations passed in the areas of public-private partnerships ('PPP') and new structures and instruments being created. Another trend that will likely accelerate due to COVID-19 is the use of

Many M&A lawyers all over the world continually struggle to define what should or should not be considered a material adverse change.

sustainable finance instruments such as green bonds or social bonds. Investors are increasingly demanding these types of investment opportunities in search of returns that are not only financial, but also in the form of social and environmental impact. The European Union is establishing the regulatory framework for these types of instruments.

So, despite the challenges cause by the COVID-19 pandemic, many deals continue to be concluded both at the governmental level and at the private sector, business-to-business level. Although the pandemic has disrupted the way many deals have traditionally been transacted and financed, stakeholders have continually found ways to adapt to the unexpected change to their business environment.

## Notes

<sup>1</sup> As of 25 June 2020, over 120 countries had introduced export restrictions as a result of the Covid-19 pandemic according to the WTO: see [www.macmap.org/covid19](http://www.macmap.org/covid19).

<sup>2</sup> On 22 April 2020, Canada and 23 WTO members signed a joint statement to reinforce international cooperation on trade in agricultural and agri-food products. This measure arose out of the need to protect and promote food security and health in light of the restrictive actions undertaken by governments to protect their citizens. See [www.canada.ca/en/global-affairs/news/2020/04/statement-on-joint-wto-efforts-to-ensure-open-and-predictable-trade-for-food-and-agricultural-products-amid-covid-19.html](http://www.canada.ca/en/global-affairs/news/2020/04/statement-on-joint-wto-efforts-to-ensure-open-and-predictable-trade-for-food-and-agricultural-products-amid-covid-19.html).

<sup>3</sup> [www.nytimes.com/2020/07/01/business/economy/usmca-takes-effect.html](http://www.nytimes.com/2020/07/01/business/economy/usmca-takes-effect.html).

<sup>4</sup> <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2020/february/president-trump-announces-intent-negotiate-trade-agreement-kenya>.

<sup>5</sup> <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2020/july/joint-statement-between-united-states-and-kenya-launch-negotiations-towards-free-trade-agreement>.

<sup>6</sup> <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2020/march/usda-and-ustr-announce-continued-progress-implementation-us-china-phase-one-agreement>.

<sup>7</sup> <https://ustr.gov/countries-regions/europe-middle-east/europe/united-kingdom/us-uk-trade-agreement-negotiations>.

<sup>8</sup> [https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/future-partnership/guide-negotiations/transparency\\_en](https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/future-partnership/guide-negotiations/transparency_en).

<sup>9</sup> [www.euractiv.com/section/uk-europe/news/uk-sets-september-deadline-for-eu-trade-deal/](http://www.euractiv.com/section/uk-europe/news/uk-sets-september-deadline-for-eu-trade-deal/).

<sup>10</sup> [https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/future-partnership/guide-negotiations/transparency\\_en](https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/future-partnership/guide-negotiations/transparency_en).

<sup>11</sup> [www.gov.uk/guidance/uk-trade-agreements-with-non-eu-countries-in-a-no-deal-brex](http://www.gov.uk/guidance/uk-trade-agreements-with-non-eu-countries-in-a-no-deal-brex).

<sup>12</sup> [https://ukandeu.ac.uk/explainers/mutual-recognition-agreements-mras-all-you-need-to-know/#:~:text=Mutual%20recognition%20agreements%20\(MRAs\)%20are,mutual%20recognition%20between%20trading%20partners](https://ukandeu.ac.uk/explainers/mutual-recognition-agreements-mras-all-you-need-to-know/#:~:text=Mutual%20recognition%20agreements%20(MRAs)%20are,mutual%20recognition%20between%20trading%20partners).



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# Deal-Making in COVID Times: New Trends



The intention of this article is to highlight deal-making in COVID-19 times, to explain the trends that have evolved from the pandemic and also to further explain the long-term effects of COVID-19 on the economy. In addition, the article seeks to shed light on how time will convey whether a return to normalcy and the upsurge of technology will see an improvement in transactions.





## Introduction

At the time of writing, the 2019 state-of-the-art coronavirus or COVID-19 (these terms will be used interchangeably) has infected about 14,565,550 of the global population. It is still infecting the vigour and economic benefits, societal order and political strength of nations throughout the world with a death toll of about 607,781 and 216 countries, areas or territories with cases.<sup>1</sup>

At a time when the population across the globe is going through uncertain times to survive illness, economic adversity, political disruption and other existential fears, it is inevitable that the need is to look past the present moment. Coronavirus and the difficulties that the world has experienced will pass, however, the world will not be the same. Thomas Friedman, an American political commentator, recently remarked in a New York Times op-ed that Coronavirus will create new historical divide, namely before and after Corona.<sup>2</sup>

In Africa, as well as Nigeria, the economic effects of the pandemic are more serious, compared to other parts of the world, due to predominant economic challenges that have existed in the economy of the continent long before the coronavirus disease outbreak. Despite the gruesome challenges caused by coronavirus and the lockdown, the new trends are starting to make headway. There is a rise of a new normal, and people and businesses are adapting to the new world, and more importantly, making the most of it.

The Nigerian Government mandated a lockdown in all states, especially in Lagos and Abuja, where high numbers of cases kept rising. This led to an increase in remote working, which reduced daily commutes and the spread of the virus. The whole world is shifting towards strictly mobile companies, enabling businesses to save on office rental costs, while getting more productivity from staff who will not have to deal with commuting.

As businesses increase their agility in remote working, the need for the hardware and devices to make that model succeed will emerge. For entrepreneurs, opportunities have begun to innovate in that landscape and also to invent different ways of transacting business. These evolving areas could definitely lead to Nigeria's economic recovery post-COVID-19.

## The Impact of COVID-19 in the Commercial Industry

Taking a closer look at stock markets globally will confirm that COVID-19 has led to an unpredictable economy and interrupted global supply chains. Businesses are re-evaluating their current structure in light of the current reality, with a view to exploring opportunities for operational efficiency, commercial viability and managing tax footprints, among other things.

The surge of unemployment benefit claimants and coronavirus-induced layoffs in western countries were quite high in number, putting into consideration the effect of unemployment and coronavirus-induced layoffs in underdeveloped countries. An example is Nigeria, which is in the western part of Africa, given that its economy had already experienced weak growth before the pandemic from the 2014 oil price shock. The blow that the pandemic inflicted on the global economy towards the end of March 2020 will forever be in history; in essence, even when the effect of the pandemic halts, there will unquestionably be a wave of continuing economic impact for years to come.<sup>3</sup>

However, the business of application developers is booming because the existing applicable technology and platforms (drones, Google, Zoom, Skype and Teams, for example) are the relevant mediums for connection and communication.

## Emerging Trends Resulting from COVID-19

There has been a shift in the global economy and the way that employment is delivered in the new world that exists today. Several industries have been particularly affected by coronavirus and, for the purpose of this article, a few of these sectors will be discussed from a legal angle.

Looking at the present situation, it is evident that coronavirus will transmute the legal, financial, health, real estate and other relevant sectors. Law, finance and other key sectors are heading towards a new era which is the digital age. For the legal sector, the digital age will restructure the panorama of law and legal practice. Although the pandemic was not anticipated and the world was caught unprepared, the undefined time of coronavirus will precipitate a far-reaching reimagination of the legal sector.





Generally, and commercially, it is apposite to understand that we are in a new world, coronavirus has shifted the normal way of operations.

### Remote Working and Meetings for Deal Closing

Law has a virtual presence and most industries have developed an undeniable new type of workforce during the pandemic, accepting out of office working, school closures, social distancing and stay-in-place measures. For the financial sector, coronavirus inflicted a big blow to Mergers & Acquisitions ('M&A'), thus investment banks and financial institutions embraced new practices. The financial sector, that had tapped into the digital era, is now poised with an edge that is particular to that sector.

It is relevant to mention that generally deal-making depends on incontestable factors such as individuals interacting, networks, collaborations, reactions and body language. These have been altered by coronavirus, thus bringing to the forefront that, for smooth deal-making, technology will play a vital role. During these uncertain times, utilising technology in this new milieu is far more involved than mere information sharing. Substantial individual interface and the traditional confines of deal-making need to be pushed and superseded using digital capabilities.

While the coronavirus has necessitated assessments of the incompatibility between models and agreements for both buyers and sellers, and an awareness of different risk cognisance, this will ultimately give way to a new world of the terms and financing for transactions. Further, the extent to which you are able to work together with your team, collaborate with your partners

or showcase clients and business cases remotely has become a measurable factor which simply means, 'it's all about digital'!

### The Importance of Data for Deal-Making

For efficiency, deliverables and successful transactions, data—and accessibility to the right data—is of great importance, as this poses a distinct advantage for deal-makers. With the current situation, it has been realised that technology is interwoven with real human factors and its existence is vital, and not just for sharing information or data algorithms.

The realisation that the closing of deals does not entail an office presence from both parties became more evident due to coronavirus. However, for technology to work first-hand with this present situation requires devices to be in place for the exchange of documents, negotiations and bank transactions to be executed online. For meetings, a computer is required for face-to-face discussions.

### Is Virtual Deal-Making Looking Different?

Since coronavirus has changed the economic scenario around the world, companies are reevaluating their M&A strategies as the competitive scenery transforms and new opportunities open up. Companies have shifted their efforts to productively steer through the crisis and serious legal issues such as access to capital, proper due diligence, regulatory considerations and negotiating skills are vital for a positive outcome.

The legal and financial sectors and other sectors that desire to progress, need to consider the virtual presence of transactions as they assess opportunities in this uncertain environment. In the near future, the panorama of the virtual presence of transactions may look very different and financing ought to be considered as risk is involved and deal terms will definitely experience a revolution.

To this end, contracts and agreements are to be tailored in the new era of coronavirus. Although the covenants in contracts and agreements will be tightened, guarantees and earnout will be flooded. Is the legal sector ready yet?<sup>4</sup>

The experience of the pandemic may lead to more research and collaboration agreements and agreements that give buyers access to technology before deciding if they want to proceed or not. This could be more applicable in an option structure.

The players are the sectors that adapt effortlessly, ignoring all the obstacles but forging ahead to make progress. In the long run, the players will be supported by the technological system they have designed and the tools that are in place to adjust in the world that we are now in, without simply replicating the practices in these sectors, but to offer a significant improvement of them.

Uncertainties for the real estate sector cannot be ignored and eventually there may not be a need for a physical location to operate businesses, although virtual offices are still in high demand, but that means space sharing. The common trend that coronavirus has opened up is remote working, which has delivered the same services, if not better, with transactions being completed and agreements executed by completion dates. The same goes for the retail sector, where sales were maximised via an online presence.

Basically, because several eminent transactions fell apart during the peak of the pandemic, the new world means thinking about the unimaginable but logical way to keep the economy in shape.<sup>5</sup>

Real estate investments have generated quick and steady cash flows for decades, but now this has changed and real estate players are facing tough times, from obstructions to construction delays, not meeting targets disrupting cash flow, and returns

to the struggle of mitigating health risks for both employees and customers being factors. Also, the portfolios of owners have suffered a slash in income on various assets. There is no promised road for cash flow from tenants. Self-storage, data centres and warehouse facilities experienced less decline compared to malls, hotels, health facilities and private accommodation (hostels), which have been very affected.<sup>6</sup> Apart from the above, promoted behavioural changes in the real estate sector, the standard and design of buildings has been impacted as safety measures are paramount. E-commerce has also come into play full time and further increased demand for industrial space. The core of the economic impact on the real estate sector is still uncertain; nonetheless, if proper care is not taken, real estate space will become outmoded and the shift in behaviours might lead to this.

Long before the pandemic, the real estate sector had been shifting towards digitalisation by creating a digitally-enabled process for the ease of access and assistance of tenants and users. The shock of the pandemic facilitated this because the lockdown of physical contact augmented the prominence of digitalisation. Overall, the collective impediments have reformed the narrative of real estate players to focus on acquisitions of operating companies, public real estate investment trusts and a large asset portfolio. The pandemic has forced a change in the way that real estate business is carried out and, for the long term, this has altered the normal procedure and interaction of consumers and businesses.

### COVID-19: The New World

Generally, and commercially, it is apposite to understand that we are in a new world, coronavirus has shifted the normal way of operations. Even if all established plans are carried into action and emergency planning is in place, how effective is this?

The measures for breach of contract will need to be revisited, as the courts are generally unsympathetic to attempts of complex parties to get away with a transaction that they have endorsed.<sup>7</sup> Technology seems to be the option to go with, but there are issues associated with Information Technology ('IT') and the issues of performance should be considered and addressed. If IT is the way out for now, improvement of the sector should be top priority.

The inability to perform a contract due to having to self-isolate an office or a team due to the outbreak of coronavirus, under many *force majeure* clauses would likely qualify to be classified as a *force majeure* event, particularly in light of the continued impact that the pandemic is having upon global businesses, it is possible that there may be fewer mitigation measures available to parties. This should be addressed and the legal aspect should also be reviewed, given this new world we are in today.

In transactions, bank guarantees and letters of credit are instruments used to make payment, depending on the jurisdiction where the instruments are issued. In cross-border trade, it is common to make payments with instruments that are as worthy as money. Once this type of instrument is involved in a transaction, it serves as a substantial control which helps when the counterparty

is stalling performance by invoking *force majeure*. For instance, the swift claims that could arise from trade credit insurance, which covers businesses against debt that cannot be paid by their consumers or suppliers, is inevitable due to the anticipated contractual breaches or insolvency risk.

Experts disagree about the extent to which video conferencing can replace face-to-face meetings in all situations, although there is consensus around how the virtual tools have been found to be useful and, furthermore, experts have agreed in the past that when the demand for technology was rising, body language is very difficult to read in a video.

Establishments are also reconsidering their current premises in light of the current reality with a view to exploring opportunities for equipped productivity,

## Publications Committee Guidelines for Publication of Articles in the IPBA Journal

We are pleased to accept articles on interesting legal topics and new legal developments that are happening in your jurisdiction. From time to time, issues of the Journal will be themed. Please send: (1) your article to both **Priti Suri** at p.suri@psalegal.com and **James Jung** at jjung@collaw.ac.nz; (2) a lead paragraph of approximately 50 or 60 words, giving a brief introduction to, or an overview of the article's main theme; (3) a photo with the following specifications (File Format: JPG or TIFF, Resolution: 300dpi and Dimensions: 4cm(w) x 5cm(h)); and (4) your biography of approximately 30 to 50 words.

The requirements for publication of an article in the *IPBA Journal* are as follows:

1. The article has not been previously published in any journal or publication;
2. The article is of good quality both in terms of technical input and topical interest for IPBA members;
3. The article is not written to publicise the expertise, specialization, or network offices of the writer or the firm at which the writer is based;
4. The article is concise (2500 to 3000 words) and, in any event, does not exceed 3000 words;
5. The article must be written in English (with British English spelling), and the author must ensure that it meets international business standards;
6. The article is written by an IPBA member. Co-authors must also be IPBA members; and
7. Contributors must agree to and abide by the copyright guidelines of the IPBA. These include, but are not limited to
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viable practicality and handling tax paths amidst further matters.

Nonetheless, this is the situation being faced in the world here and now. With time and experience, perhaps video conferencing will enable the kind of interaction and confidence that seems to come naturally with face-face meetings.

It is not news that the coronavirus has caused a bigger spur in the virtual world. Although, before coronavirus, the majority accepted virtual models for transacting business, now in this new world created by the pandemic there are no options left—a virtual presence is an effective measure, but more so for companies to experience growth during these uncertain times where a virtual presence is required. For instance, there is an increase in the number of organisations providing remote education and training. Several educational institutions across the world have been forced to adopt remote training of pupils. Thus, the pandemic has helped to promote more online training, teaching, skill acquisition and education in general.

### Approaching New Transactions

The right time for negotiating new deals might be believed to be now if keying into opportunities seems the right time for valuation, however, if the former is not valued properly, on the other hand, deals might not be available. A better advantage might be capitalising on the pandemic and seeing this time as a time to build trust and faith so as to complete deals at a reasonable value.

An important key for legal, financial, health and other major sectors is to quickly mobilise a response plan for the pandemic, improve business operations and perceptively project for the future. Also, multidisciplinary expertise should connect globally via networks to emerge stronger.

Digital and workforce transformation are intertwined and, at the pace at which technology is moving, it is becoming more advanced, which has created a more significant demand for upskilling within the workforce. Furthermore, the pandemic has accentuated the

significance of certifying that employees have both the right skills and willingness to constantly learn, adjust, grow and embrace change.

There is no certainty to the path for complete recuperation within distinctive markets and also there will possibly be suggestive change in the impact and speed of recovery within different business sectors and subsectors. It is therefore important to look at how to ensure that your business is in the best position to benefit and be responsive in proceeding to opportunities, while bearing in mind the need to safeguard financial stability and also handle risks and exposure.

**Due to the pandemic, most countries are predicted to fall into recession in 2020.**

### Conclusion

The effect of the pandemic disrupted quite a few transactions in various sectors that are the bedrock of the economy; nonetheless, financial services, technology, healthcare and retail with an online existence have been expanded. Telehealth services might be on the rise and in the long-term this will have a positive effect on society as healthcare will be more accessible and reachable. This is one of the teaching moments and lessons from coronavirus that 'less is more'.

Post the COVID-19 era, main sectors should consider and review the steps that have been taken to avoid and especially reduce the effect of the pandemic upon the workforce to show an ability to continue to perform given the lessons learned from coronavirus. The main player here again is the technology sector, given that there will be a high demand for devices, the provision of software, drones, an increase in robotics, block chain and so on.

Due to the pandemic, most countries are predicted to fall into recession in 2020 with the per capita income contradicting in the largest fraction of countries globally since 1870—there is a projected prediction for advance economies to shrink by seven percent. There will be a spill over from the weakness of the aforementioned from the viewpoint of evolving markets and underdeveloped economies.<sup>8</sup> For the Nigerian economy, hope lies ahead in this new world of business if all of these emerging trends and business opportunities are maximised.

The pandemic is unmatched in all factors: scale, size, magnitude, coverage and its impact globally. Thus, in essence, it is only natural that the pandemic will affect deal-making dynamics in a way nothing has ever done before. Hopefully, the temporary measures to ensure that the setbacks to the global economy due to the pandemic are only temporary.

Eventually, the speed of change to the business model will determine if demand in service will rise or fall. To this end, the response could be determined by the virtual dimension of coronavirus change.

In order to successfully respond to the global pandemic, regulators have a role to play. They should implement reforms that will align with the new world today with a more comprehensive package of legal, financial and economic measures. It is worthy to note that reforms can provide companies and the economy breathing space.

A closing remark is 'a big welcome to the digital era', even though not envisaged, for continuity of business and an economy boost, most industries, if not all, will have to adapt to avoid business risk operational disruption. 'Online presence' happens to be the deal-making in COVID-19.

**Notes**

- <sup>1</sup> [www.who.int/emergencies/diseases/novel-coronavirus-2019](http://www.who.int/emergencies/diseases/novel-coronavirus-2019).
- <sup>2</sup> Thomas L Friedman, 'Our New Historical Divide: B.C. and A.C.—the World Before Corona and the World After', The New York Times (17 March 2020), available at [www.nytimes.com/2020/03/17/opinion/coronavirus-trends.html](http://www.nytimes.com/2020/03/17/opinion/coronavirus-trends.html).
- <sup>3</sup> [www.businessinsider.com/coronavirus-business-impact?r=US&IR=T](http://www.businessinsider.com/coronavirus-business-impact?r=US&IR=T).
- <sup>4</sup> [www.forbes.com/sites/markcohen1/2020/03/24/covid-19-will-turbocharge-legal-industry-transformation/#5bf6fd0e1195](http://www.forbes.com/sites/markcohen1/2020/03/24/covid-19-will-turbocharge-legal-industry-transformation/#5bf6fd0e1195).
- <sup>5</sup> [www.marketwatch.com/story/coronavirus-slashes-deal-making-globally-what-to-expect-next-2020-07-13](http://www.marketwatch.com/story/coronavirus-slashes-deal-making-globally-what-to-expect-next-2020-07-13).
- <sup>6</sup> [www.mckinsey.com/industries/private-equity-and-principal-investors/our-insights/commercial-real-estate-must-do-more-than-merely-adapt-to-coronavirus#](http://www.mckinsey.com/industries/private-equity-and-principal-investors/our-insights/commercial-real-estate-must-do-more-than-merely-adapt-to-coronavirus#).
- <sup>7</sup> [www.nortonrosefulbright.com/en/knowledge/publications/87aad5d5/covid-19-private-m-a-transactions-issues-and-emerging-trends](http://www.nortonrosefulbright.com/en/knowledge/publications/87aad5d5/covid-19-private-m-a-transactions-issues-and-emerging-trends).
- <sup>8</sup> [www.worldbank.org/en/news/feature/2020/06/08/the-global-economic-outlook-during-the-covid-19-pandemic-a-changed-world](http://www.worldbank.org/en/news/feature/2020/06/08/the-global-economic-outlook-during-the-covid-19-pandemic-a-changed-world).



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# IPBA New Members June to August 2020

We are pleased to introduce our new IPBA members who joined our association from June to August 2020. Please welcome them to our organisation and kindly introduce yourself at the next IPBA conference.

<b>Chile</b> , Felipe Barrientos <i>Barros &amp; Errázuriz</i>	<b>Spain</b> , Rubén Ferrer <i>Gómez-Acebo &amp; Pombo Abogados</i>
<b>India</b> , Ish Jain <i>Regius Legal LLP</i>	<b>Spain</b> , Santiago Gómez-Acebo <i>Gómez-Acebo &amp; Pombo Abogados</i>
<b>India</b> , Sanchit Agarwal <i>Khaitan &amp; Co LLP</i>	<b>Spain</b> , Manuel Martín <i>Gómez-Acebo &amp; Pombo Abogados</i>
<b>India</b> , Priyanka Shetty <i>AZB &amp; Partners</i>	<b>Switzerland</b> , Thomas Weber <i>LALIVE SA</i>

## Members' Notes

### Lalit Bhasin, New Delhi



A limited-edition pictorial biography of IPBA Past President Lalit Bhasin (2012-2013) was released on 29 August, by Mr Fali S Nariman. Mr Bhasin pursued law from the Faculty of Law, Delhi University, and started his law practice in 1962. He is currently Chairperson of the Society of Indian Law Firms, President of the Bar Association of India, and past Chairperson of the Bar Council of Delhi. The book, titled, 'Lalit Bhasin—A Lifetime Dedicated to Law', contains photos and stories spanning 80 years of Mr Bhasin's personal and professional life.

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### Areej Hamadeh, Kuwait



Areej Hamadeh has been recognised as one of the women leaders of 2020 by IFLR1000, EUROMONEY. Areej is a founder of the legal challenges group in Kuwait. She has over 20 years' experience and has been advising domestic and international clients across the globe. She specialises in providing professional legal services for multinational companies and foreign, M&A, small business and corporate issues and disputes and contracts

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### Bruce Aitken and Ngosong Fonkem



Written by Bruce Aitken and Ngosong Fonkem, a new book, *Trade Crash*, will be released at the end of September 2020. The book is extremely timely as it focuses on, among other things, the likely impact of the COVID-19 pandemic on the November 2020 elections and on a likely trade crash to and of the global supply chain in 2021. *Trade Crash* is a multi-media video book with links to a short film and several interviews, plus directions to hours of Zoom seminars on COVID-19 and trade hosted by WITA (D.C.)

from March to July 2020. It is written from a multi-cultural perspective, with authors and contributors whose backgrounds can be traced to 7 countries: Cameroon, China, France, India, Malaysia, South Korea and the United States.

An abridged edition (45 of 265 pages) is available now on Amazon.com and can be found by searching for 'Bruce Aitken'. To speak to the authors and/or to arrange interviews, contact [beaitken@aitkenberlin.com](mailto:beaitken@aitkenberlin.com) or [ngonkem23@gmail.com](mailto:ngonkem23@gmail.com).



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