



The global economy across sectors has been affected by the novel coronavirus (officially renamed, “COVID-19”). The shockwaves of this pandemic have been felt across countries and continents. The growth or stagnation of the real estate sector is largely affected by the demand, supply, and cash flow in the economy. Given that the Indian real estate sector was already reeling under the effects of the ongoing solvency crisis, it is difficult to ascertain how much of an impact the COVID-19 outbreak will have at this point in time.

In this edition, we examine certain key considerations that may be assessed and addressed by stakeholders in the real estate sector:

Real Estate Transactions

Transactions involving investment in, purchase and sale of, real estate assets in India, have high dependency on government offices. For example, to assess the feasibility of investment in an asset, a diligence is usually undertaken, which can only be done by verifying records at government offices; conveyance of an asset needs to be registered at the office of the Sub-Registrar, a government official; and to enter a purchaser’s name as the owner of an asset, the relevant government body needs to be approached. In the wake of the spread of COVID-19, it would be prudent to take into the account the possibility of non-availability of government officials or closure of government offices to undertake the above procedures and factor these into the timelines for any proposed investment, purchase, or sale of real estate assets.

Leasing, Operation and Management

Focused strategies for ensuring safety and containment, if required, should be formulated by organisations undertaking operations and management of commercial projects, malls, business parks and information technology parks, which should be implemented taking into consideration the following recommendations:

- a response plan should be in place, should the COVID-19 virus infect any person working or visiting any property;
- policies of tenants should be monitored to identify tenants who have implemented ‘work from home’ for their work force and manage infrastructure, utilities, and facilities at the property to minimise wasteful expenditure;
- events and gatherings at the properties should be postponed to eliminate chances of spreading the virus and for any commercial venues in the properties, proactive measures should be taken to assess if such events should be postponed or cancelled with offer of refund to the participants;
- service providers for the operation and management should be looped in to the strategy devised for implementation, so as to ensure business continuity;
- deep cleaning and hygiene measures should be implemented in the common areas and these services should be extended to the tenants for deep cleaning of their premises as well. The tenants should be directed to provide a written undertaking on their commitment to monitor and implement hygiene standards in their premises;
- use of amenities such as game rooms, swimming pools, gyms in the properties should be restricted or closed;
- alerts from public health officials and the government should be displayed at the property to inform all tenants and visitors of best practices of hygiene and behaviour to work towards minimising the spread of the COVID-19 virus, however, this should be carefully drafted so as to not be construed as scare-mongering; and
- for these purposes, the maintenance agreements with tenants should be reviewed to ascertain the extent of the liability of the organisation.

Review and Assessment of Liability

Terms of agreements with investors, tenants, as well as other stakeholders should be reviewed to determine the liability and cost which an organisation may be exposed to with regard to a real estate asset due to the spread of the COVID-19 virus, whether as an investor, owner, developer, purchaser, or a tenant. In case of lock-down or restriction of access to tenants or owners, the relevant terms of the contracts should be reviewed to address:

- any claims opposing such lock-down or access restriction; or
- withholding of rent by a tenant or operation and maintenance charges by any owner, as a result of a lock-down or access restriction.



Careful examination of 'force majeure' clauses of these agreements and insurance policies obtained, should also be undertaken with appropriate advice from legal practitioners. Please refer to our alert on commercial agreements to find out more about force majeure and the doctrine of frustration.

Continuity of Development of Projects

For projects which are under construction, close monitoring of the work staff and labour would be advisable to mitigate the risk to the work force of being infected by the COVID-19 virus. India depends on China heavily for building materials such as iron and steel, construction equipment, plastic and fibre elements used in construction activities. With production in China going down, the prices in the allied industries are susceptible to increase, thereby increasing the costs and reducing the profit margins of real estate developers in India. The possibility of delay in procurement of building materials also cannot be ruled out. Therefore, the statutory and contractual timelines and cost for completion of projects should be reviewed and revisited, if required, in view of the outbreak. Strategic steps will need to be taken proactively to put into place the necessary

protective measures to prevent liability exposure and default of obligations under the applicable regulatory framework, financing and contractual arrangements.

The disruption to business cycle due to COVID-19 is bound to have an adverse impact on the real estate sector. Delays in decision making due to inability of key decision makers to travel, the imposition of restrictions enforced by the government agencies limiting activities and the temporary closure of businesses, operations and issuance of regulatory permissions will have a domino effect on the financial, commercial, construction, operational aspects and sales in the real estate sector. Companies should monitor their financial health to avoid any defaults or cross defaults under financing arrangements.

A careful exercise of analysing your organisation's risks and liabilities based on the above mentioned aspects will go a long way in steering your business in the right direction in the wake of COVID-19.

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