Thursday, April 30, 2020

Time to learn from the past. If COVID-19 taught us anything, it is that businesses need to be ready with alternative sources of supply and distribution. Yes, we can focus on what we discussed in our previous article, “The Pandemic Effect: Sale of a Business,” like force majeure, impossibility of performance, and frustration of purpose, but it is better (and healthier) to prepare your business as though this will happen again, because experts say it will. Here are three of the most important steps you can take for your business supply or distribution channel.

Preparation for Supply and Distribution Channels
1. **Diversify.** Like an investment portfolio, your business partners should be diversified. Target relationships that are spread across a wide swath of geography to minimize the impact of local hotspots suffering from a greater impact than others. For exclusive relationships, include a carve-out from the exclusivity provision to accommodate for issues that affect the partner’s availability or effectiveness. If you are a supplier, discuss the issue with your customer about you (and not the customer) taking the lead to secure a secondary supplier as a contingency as part of your business continuity plan. View this secondary supplier as a sub-supplier with whom you have a relationship and potentially serve in the same capacity for them. Also, believe it or not, in certain business categories, in a time of extreme crisis like this one, even your competitors can be approached. You’ll be surprised to hear we know of several instances when competitors, expressing “we are in this together,” helped each other with supplies and raw materials during this time of crisis.

2. **Bend, don’t break.** Have timing components of your agreements flexible. Build in extra lead time if you manufacture goods, that would give you a chance to pivot through an unstable period and make delivery timely. Strongly consider whether time of the essence clauses are reasonable given the nature of the relationship and the particular goods or services being bought or sold (or the new world we will be living in of real crises: pandemics, superstorms, even earthquakes in areas that were not previously seismically active). Make the payment terms flexible enough so that one missed payment against the backdrop of similar situations is not a default triggering termination. And importantly, build yourself a “cure” period to give you time to stave off a default or a lawsuit.

3. **Collaborate.** Work into the arrangement a way for the parties to speak in good faith about the situation and to find avenues to overcome challenges. You partnered in order to do business together so that everyone could win, so think about developing a mechanism to resolve challenges as they arise in a non-judgmental way that can strengthen the partnership into the future. Escalate issues internally through a joint management working group to reach a consensus for clearing the problem-causing hurdle.

### The Pandemic Effect

The “new normal” is not only about where we work, but it is also about how we view our partners in business. Yes, disputes will arise, and no, lawsuits will not go away because not all situations will be capable of being overcome. But the hope of building in a more holistic approach to your business partner relationships will serve to strengthen your core business delivery process and better prepare you for the major future uncertainties which await us.

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