INTERNATIONAL
JOURNAL FOR
BUSINESS LAW STUDIES

Website:
www.intbusinesslaw.com

MATERIAL ADVERSE EFFECT CLAUSES IN THE BACKDROP OF COVID-19 PANDEMIC – AN ANALYSIS

Rishi Kannan[1]

Abstract

The COVID-19 Pandemic has hard-hit the feasibility of performance of the terms and conditions of many signed commercial contracts, purchasing agreements by making the globe go on a pause mode. The most unprecedented healthcare crisis of the century is shattering the global Merger and Acquisition deals. Many purchasing/lending parties involved in acquisition agreements and financing agreements have started invoking the Material Adverse Effect (MAE) clauses as the financial conditions of the selling/borrowing parties got adversely affected by the COVID-19 stricken world. For any event to be constituted as a "Materially Adverse" event or to tap on the Material Adverse Effect (MAE) clause (if any) in the concerned acquisition or purchasing agreement, the change or condition caused by the event in question should materially and adversely affect the assets, liabilities, and financial results of operations, financial conditions and the future financial prospects of the target company in question.

On the other hand, COVID-19 Pandemic is an "unanticipated" event, the qualification of which as a Material Adverse Change is dependent upon the design of the Material Adverse Effect (MAE) clauses of each agreement. The current and the future of the Material Adverse Effect (MAE) in respect of the COVID-19 Pandemic is the theme which this paper attempts to address. COVID-19 and its impact on the materiality of target companies, the materiality threshold, the future design of MAE clauses in the International forum are some of the focus areas of this paper and concludes that for constituting COVID-19 as a MAE is dependent upon the specific wordings and conditions precedent of each agreement.

Keywords: Material Adverse Effect (MAE), COVID-19, Merger and Acquisition, Financial Conditions, Materiality

[1] Sathyabama Institute of Science and Technology
Email: rishikannan2001@gmail.com

Introduction

In the course of early 2020, the Global stock markets stood strong against the impact caused by the outbreak of COVID-19, a disease resulting from corona virus. Some developed countries believed that the tentacles of the virus might have remained confined to the mainland China (from where the virus is speculated to be originated) or that countries with a strong health care system would not be hit as hard. There was a common belief across the world countries that the disease would be overcome after a short fall in stock values as they firmly believed it to be a disease of the earlier kind like, SARS, MERS. But, Nature and Time proved them wrong as the COVID-19 crisis turned out to be an "unexpected" disaster. Global markets are under severe pressure with "bleak" future and "Recession" in cards.

COVD-19'S EFFECT ON INTERNATIONAL M&A Transaction Deal:

The state of Capital Market and the Real Economy has a significant bearing on the functioning of M&A market. As the Capital Market and the Real Economy[2] deteriorated owing to the COVID-19 outbreak, the M&A market got adversely affected globally. Even before the onset of the COVID-19 Pandemic, the number of M&A deals globally was already on a slight downward trend (and deal value held up only because of several megadeals).[3]The extent of harsh short-term effects of the COVID-19 disease on the M&A market is already reflective in the current situation as many companies have walked away from the M&A deals in recent days citing COVID-19 as a Material Adverse Event (MAE). For example, UK-based Cineworld dropped out from its acquisition deal with its Canada-based competitor Cineplex as they were wary about the future Entertainment industry with the onset of COVID-19(not cited as a direct reason for withdrawing from the deal). Apart from this, promising bidders such as Cinven and Goldman Sachs' PE arm, dropped out of bidding processes due to COVID-19-related concerns and changing M&A dynamics.[4]

---

[2] Peter Pollini, ' COVID-19 and the banking and capital markets', https://www.pwc.com/us/en/library/covid-19/coronavirus-banking-and-capital-markets.html

[3] Jens Kengebach and others, 'COVID-19's Impact on Global M&A'(*BCG website* March 262020) https://www.bcg.com/en-in/publications/2020/covid-impact-global-mergers-and-acquisitions, accessed 20 July, 2020

[4] Jens Kengebach and others, 'COVID-19's Impact on Global M&A'(*BCG website* March 262020) https://www.bcg.com/en-in/publications/2020/covid-impact-global-mergers-and-acquisitions, accessed 20 July, 2020

In addition, the future M&A transactions are also temporarily suspended owing to various hindrances caused by the COVID-19 such as difficulties in negotiating the contractual deals, financial difficulties, uncertainty of the selling companies' financial assets. The picture of M&A deals in the long run is quite uncertain and bleak as the impact of COVID-19 on the real economy is yet to be accurately assessed.

What is a Material Adverse Effect clause?

According to a study by Gilson and Schwartz in 2005, "Material Adverse Effect (MAE)/Material Adverse Change clauses occupy the centre stage in the negotiation of merger agreements." A Material Adverse Effect (MAE) or a Material Adverse Change (MAC) clause is a clause which enables the purchaser in a business combination agreement[5] to withdraw or walk away freely sans performing the terms and conditions of the deal in cases where the materiality of the seller is adversely affected after the signing of the concerned agreement. In other words, the purchasing party or the acquiring company can abandon the agreement when it witnesses a "material change" in the target company or the company which is to be acquired.

In case of a Financing Agreement, the lending party can demand reimbursement of funds which are already advanced and also refrain from disbursing funds that are agreed to be advanced.MAC provisions generally define "materially adverse" as events, circumstances, changes or effects that individually or collectively, are materially adverse to the business, operations or conditions (financial or otherwise) of the company and its subsidiaries, taken as a whole.[6] MAC clauses offer the onus of bearing the market threats to the buying party, whereas the risks or threats which are specific to the selling party's entity is borne by the target company.

[5]This paper is concerned of MAE clauses mainly in the context of M&A agreements. Such clauses are commonly present in many other kinds of agreements as well.
[6]*Hexion Specialty Chemicals Incorporation v Huntsman* Corporation [2008] 965 A.2d 715, 737 (Delaware court of Chancery)

The general burden of incorporating the MAC clause in any Merger and Acquisition deal is on the party seeking relief from the performance of the terms of the agreement (purchasing party in majority of cases) as MAE clauses are a result of negotiations of the parties to the agreement and vary from one agreement to another. However, the insoluble question of what is materiality is left undefined.[7]

Scope of MAE/MAC Clauses

The ambit of occurrences potentially covered by a MAC/MAE clause can affect its usage as it is a conditions precedent agreed upon by the parties prior to the signing of the agreement. If the MAE clause in a specific agreement carves out pandemics from the ambit of MAC /MAE clause, then the buying party cannot invoke the MAE clause to that effect (COVID-19 in this case).There are no specified "Pigeon-Holes" which can be qualified to be said as triggering "Material Changes" in the target companies in case of M&A deals.

In other words, MAE/MAC clauses are purely event-specific, that is, it is subject to the events in question which changes from case to case. The Delaware Court of Chancery (which delivered some useful precedents in the context of MAC/MAE clauses),observed that the party's application of phrases like "would not reasonably be expected to have" and "prospects" in the MAE definition could add a forward-looking component to the analysis and widens the ambit or range of MAE/MAC clause.[8] But, in general practice, the following events are considered to be "Materially Adverse":

- Industry Shocks
- Regulatory Differences by the Government
- Force-Majeure Events
- Decline in Long-Term Profit range of the target entity[9]

[7]Andrew M. Herman and Bernardo L.Pierick, 'Revisiting the MAC clause in Transaction' *Business LawToday(* August 2, 2010)

[8]Hexion Specialty **Chemicals Incorporation v. Huntsman Corporation [2008] 965** A.2d 715, **737 (Delaware court of Chancery)**

[9]Sathack Advocates and Solicitors, 'Renewed focus on MAC/MAE clauses in light of COVID-19(legal 500 website, June , 2020)https://www.legal500.com/developments/thought-leadership/renewed-focus-on-mac-and-mae-clauses-in-light-of-covid-19/ , accessed on 22 July,2020

MAE/MAC Clauses in World Countries

It is very fascinating to analyze the structure, treatment and enforcement of MAE/MAC clauses in various countries around the Globe. As per the research of the author, five countries in the orld have well-structured and written MAE/MAC clauses. They are the United States of America (USA), the United Kingdom (UK), Belgium, Italy and Norway. As these countries are fore-runners in the context of MAE/MAC clauses in the world, the text is more focused towards these countries. Among these five countries, the USA and the UK are the countries which gave some useful and landmark precedents in relation to MAE clauses to the International nations.

1. **MAE/MAC in UK ANDUSA:**

MAE/MAC clauses in the M&A agreements originated in the USA in the early 1940s.[10] There exists no unambiguous evidence pertaining to the origin of the MAE/MAC clauses in the Europe or the UK, but it is widely believed to be in the early 1970s.[11] Both the USA and the English contract law interpret cases related to MAC clauses in M&A deals in an analogous manner as both the countries' legal systems are very similar. The legal systems of both the countries expressly depend on the structure of definition of elements in M&A agreements by abiding the "Parole Evidence Rule" or the "Plain Meaning Rule". This rule was observed by the courts in both the countries as follows:

"..Construe a written document [...] according to the ordinary grammatical meaning of the words used therein, and without reference to anything which has previously passed between the parties to it."[12]Case laws in the context of MAC clauses are limited n the UK, but one of the most important case law in this regard was when the Takeover Panel took on a case pertaining to MAC conditions in Public Takeovers where it ordered WPP plc's offer for Tempus Group plc, on the subject of a MAC condition (2001) and held WPP to its offer.[13]

[10]Andrew A. Schwartz, "*A Standard Clause Analysis of the Frustration Doctrine and the Material Adverse Change Clause"*(2010) 57 UCLA Law Review 789
[11]Thorsteinn Frimann Sigurdson, ' The Material Adverse Change clause'(Reykjavik University 2010)
[12] **Lovell and Christmas Ltd v Wall (1911) 104 LT 85**
[13]Offer by WPPGroup plc for Tempus Group plc **(Takeover Panel Ruling, 6 November 2001), [18].**

2. MAE/MAC in Belgium:

MAC/MAE clauses did not exist in Belgium for a long time like in the US or in the UK. It is recognized by the courts in Belgium only in the recent times.[14] The parties in Belgium use MAE/MAC clauses as a tool to facilitate renegotiation of the terms and conditions of a signed commercial agreement(M&A deals in this context) and they are least interested in discharging the contract except in cases of exceptional change in the current or future earning potential of the target entity.

Belgian Law follows the principle of "Freedom to Contract" irrespective of the conditions agreed upon prior- signing of the agreement or post- signing of the agreement but, before "closing" of the agreement. Under the Belgian contract law, any commercial contract (including purchasing agreements) are binding only if it satisfies the following essential elements viz., Free Consent, Capacity, An object and a Cause.[15]

3. MAE/MAC in Italy:

Italy has no separate statutory provisions to administer MAE/MAC clauses as is the case of many other countries in the world. But, MAE/MAC clauses are very common in Italy as it also follows the principle of "Freedom to Contract" thereby validating the design and enforceability of MAE/MAC clauses.

It is pertinent to note that the Italian courts has not rendered or even dealt with a single case law enforcing the MAC/MAE clauses.[16] Italian Contract law has put down that the design of a MAC/MAE clause should be in such a manner so that it is not illegal (in the context of Italian Laws); it can possibly be performed by a reasonable human being and should not hamper public morality for ensuring its enforceability.

---

[14]Corbiau, Patrice and Dierickx,Geert,"**Drafting MAC clauses in light of Delaware case law, Inside M&A**"Inside M&A, December 2007, 5

[15]Corbiau, Patrice, 'Use of Material Adverse Change Clauses in Belgium' *Mondag Business Briefing* (Washington, January 17, 2008).

[16]Mazza, Filippo, 'Material Adverse Change Clauses under Italian Law'*Mondag Business Briefing* (Washington, January 17, 2008).

4. MAE/MAC in Norway:

MAE/MAC clauses are very familiarly used in the contracts drafted in Norway. Norwegian law also follows the general principles of contract law subject to the inclusion warranties clause in the agreement in question. Norwegian legal system has not witnessed any disputes pertaining to MAE/MAC clauses in any of its jurisdiction.[17] Unlike many other countries, MAE/MAC clauses are an integral part of M&A agreements in Norway.

5. Other Jurisdictions:

As specified earlier in this paper, there are few case laws and structured jurisprudence in regard of MAE/MAC clauses in other jurisdictions other than the above discussed five countries. But, certain jurisdictions have some statutory provisions regulating walk-away from M&A deals by purchasing companies citing reasons other than the occurrence of a MAE. In **Brazil,** there exists statutory backings for regulating buyers' termination rights from M&A deals other than MAE clauses, but similar to them. They are: Force Majeure event[18], on the occasion of which the debtors are let free from their liability to indemnify any losses suffered by the lending company on account of non-performance of an obligation ought to be performed by the debtor and the other law providing for terminating an agreement due to hardship [19]caused by an extraordinary or unavoidable event to one of the parties to the agreement.

These provisions are analogous to the doctrine of frustration under the English law and the doctrines of impossibility and frustration of purposes under the legal system of the USA. In the Indian context, there exists statutory provisions explaining the doctrine of frustration[20]and the force majeure[21] event paving a pathway for impossibility of performance of a contract. The closest case law in the context of M&A deals in India was Nirma Industries Limited and Another Versus Securities Exchange Board of India[22]where Honorable Surinder Singh Nijjar, J of the Supreme Court of India ruled that the Scan allow termination of an open takeover offer only when the impossibility of performance is specified within the statutory limits.

[17]Thorsteinn Frimann Sigurdsson, "The Material Adverse Change clause"(2010).
[18]The Brazilian Civil Code2002, Article 393
[19]The Brazilian Civil Code2002, Article 478
[20]The Indian Contract Act 1872, Section 32
[21] The Indian Contract Act 1872,Section 56
[22][2013] 8 SCC 20

Determination of Materiality

There is no set benchmark or parameter in constitution of an event as a MAE. It is only the particular set of facts and circumstances of each case that comes before the court of law in any jurisdiction. In this context, among the world countries, the USA has witnessed and administered some binding precedents. The Delaware Court had attempted to lay down some parameters that would constitute materiality, but it was specified not to be "bright lines" for future cases in that context. The case of ***Akorn Inc. v. Fresenius Kabi AG***[23]*is the recent case in the International forum where the Delaware Court of Chancery laid down some standard parameters for determining materiality in MAE clauses. They were:* (1)Durational Significance and (2) Severity of the event.[24]

1. **Durational Significance:** In order to constitute an event as a MAE, the duration of the event in question should be "very long". It should not be an event which sustains for a short period of time. In other words, the occurrence should be a "non-temporary' one to be qualified as a "Materially Adverse" event. In addition to that, the specific event should be "unknown"[25] to be an MAE. In a nutshell, the event should be long-term or terminal as opposed to temporary or recoverable to be said to have a material adverse effect on the selling concern. The duration of the COVID-19 outbreak remains unprecedented; however, the effects of it on most of the target companies are generally expected to have only a short-term impact.
2. **Severity of the event:** An event should be "Intense" and "Severe" for its eligibility as having "materially adverse" effect on the target company. To constitute "severity', the event should predominantly have a bearing on the income-earning(essentially, long-term) potential of the selling entity. In rare cases, there is also a minor chance of connecting MAE/MAC events to something more related to the principle of frustration of contracts.[26]

[23] C.A. Number2018-0300-JTL(Delaware court of Chancery 2018).
[24]Brownstein Hyatt Farber Schreck , ' COVID-19- Evaluating Material Adverse Change clauses in Loan Agreements'(Brownstein Client Alert, March 24, 2020) https://www.bhfs.com/insights/alerts-articles/2020/covid-19-evaluating-material accessed on 31 July,2020
[25]In *Re IB Shareholders Litigation* 789A.*2d. 14 (*Delaware court of Chancery 2001*)*
[26]Suneeth Katarki and others, 'COVID-19: Impact of MAE/MAC clauses on M&A and Investments'(IndusLaw,March 26, 2020)https://www.mondaq.com/india/maprivate-equity/908528/coronavirus-covid-19-impact-of-maemac-clauses-on-ma-and-investments) accessed on August 2,2020

In spite of some attempt to lay down some "easy to apply standards" to determine the materiality of an event, establishing MAE/MAC is undoubtedly a facts-specific process as apart from " Quantitative" factors, "Qualitative" factors are also taken into consideration for accounting materiality in many cases.

Can COVID-19 Qualify As a Material Adverse Event (MAE)?

COVID-19 may or may not be treated as a Material Adverse Event (MAE) which is a subjective matter of each agreement's wording or definitive clause.[27] The applicability of the standards set by the Delaware Court Of Chancery on binding precedents with the COVD-19 Pandemic would prove handy in determining whether COVID-19 triggers MAE clauses or not.

1. **Durational Significance:** Applying the yardstick of "duration" to the COVID-19 situation, it could be said that it is too early to arrive at a conclusion of the duration of the event as its vigorous spread across the world has not yet stopped its rigorous journey. Though some countries (e.g., New Zealand, Tanzania, Fiji, Vatican) claim they are corona-free, it cannot be said they have destroyed the corona virus as the world is still reeling under the race of finding a vaccine which is the only scientifically conclusive proof of winning the battle against the virus. In this regard, as per the General Language of the MAE/MAC clauses, COVID-19 is still a "temporary" event.
2. **Severity:** In the International Context, the severity of the disease varies from country to country. As of the current situation, the United States of America (USA), Brazil and India are the countries where the severity of the disease is "very high". Even in these countries, invoking MAE/MAC clauses by reason of COVID-19 is highly dependent upon the condition of particular agreements as many M&A agreements exclude acts of human agency such as war, terrorism, sabotage and pandemics[28] as "carve outs" to invoke MAE/MAC clause.

[27]Miller, Robert T., "Material Adverse Effect Clauses and the COVID-19 Pandemic" (May 18, 2020). Available at SSRN: https://ssrn.com/abstract=3603055 or http://dx.doi.org/10.2139/ssrn.3603055

[28]Miller, Robert T., "The Economics of Deal Risk: Allocating Risk through MAC Clauses in Business Combination Agreements" (August 15, 2008). William & Mary Law Review, Vol. 50, 2009, Villanova Law/Public Policy Research Paper No. 2009-8, Available at SSRN: https://ssrn.com/abstract=1375143.

In those cases, COVID-19 may not be considered as a Material Adverse Event (MAE). However, even when an MAE clause has a language which carve out COVID-19 from the definition of an MAE (from the seller-friendly perspective), it may also include a disproportionate-effect exclusion (as a buyer-friendly standard) to provide that such exception cannot be put into application when the effect of COVID-19 Pandemic is disproportionately adverse on the selling entity than the adverse effect it has on other companies operating in the same industry as the target.[29]Though all events that are not reasonably known to occur in the future is under the purview of MAE/MAC clauses, COVID-19 is subject to deep scrutiny before being qualified to be labeled as a MAE. World Countries are under intense pressure to enforce signed M&A deals amidst the outbreak as purchasing entities fear of material adverse changes in the target company.

Global Overview

As the virus gripped the world in the early 2020, the **Polish Airline Company LOT** walked out from its proposed acquisition agreement with the **German-based Condor** owing to COVID-19 on April 13, 2020.[30] The date of entering into the M&A deal is the major factor considered in determining the constitution of the COVID-19 as a Material Adverse Event (MAE). There is a variation between MAC provisions entered into before the COVID-19 outbreak and the agreements entered into after the onset of the COVID-19 pandemic.

A 'traditional' generic MAC clause, entered into before the onset of the Corona virus, in all probabilities, will not be inclusive of the effect of the COVID-19 pandemic on the entity which is to be acquired – as these will normally carve out events resulting from the general market forces such as pandemics. The existing doctrine of freedom of contract that would be relevant to provisions dealing with MAC situations, contracting entities is free to allocate risk according to their own risk analysis.

[29] Kathleen M. Porter, Anna Jinhua Wang , J. Michael Wirwin, ' The Coronavirus(COVID-19) and Material Adverse Effect clause'(National Law Review, March 23, 2020)https://www.natlawreview.com/article/coronavirus-covid-19-and-material-adverse-effect-clause , accessed on August 4,2020
[30] https://www.ft.com/content/1f3e5a38-304a-4186-9341-fef44266eefd

This connotes that an M&A deal's MAC provisions designed after the outbreak would focus on the impact of a defined material adverse change as COVID-19 becomes a "known" event.[31]In general regard, the Supreme Court of China ruled in a case that non-performance of contractual obligations owing to SARS outbreak would qualify as a "force-majeure" event in consonance with the **People's Republic of China (PRC)** laws (the case was not in the context of M&A deal).[32]

Though there has been no formal opinion by the Chinese Apex court on whether COVID-19 qualifies as a Material Adverse Event (MAE), the regional High courts have issued guidelines in that regard which reads as, whether the parties to the contract are entitled to claim for being exempted from part or all liability under the contract will be reviewed on a case-by-case basis, taking into consideration of the specific facts of each case.[33]Also, situations whose existence and impact is felt globally are unlikely to be sufficient to establish a MAC.[34]

As COVID-19's presence and impact is global, it is more unlikely to be qualified as a Material Adverse Event (MAE). Recent developments in this regard include, in **Canada**, CanCap Group Incorporation's stand to walk away from its purchase of Rifco Incorporation (popularly known as the Rifco dispute) and, in the United States of America(USA) , the **Sycamore Partners** tried to tap its termination rights from the purchase of **Victoria's Secret from L Brands** (before the Delaware Court of Chancery).

Both the companies raising the issue in the Court of law rely on the MAE provision contained in the purchase and sale agreement arising from the impact of COVID-19 on the target's business.[35]In the UK case of ***Grupo Hotelero Urvasco SA v Carey Value Added SL & Another***[36]*, it was opined that the definition of "financial condition" excluded "prospects of a company and the external economic and market shocks" except as otherwise provided in the agreement.*

---

[31]Caroline Daout and others, 'Does COVID-19 qualify as "material adverse change" from an M&A perspective (DLA Piper. June 4, 2020)https://www.dlapiper.com/en/uk/insights/publications/2020/06/does-covid-19-qualify-as-material-adverse-change-from-an-ma-perspective/ , accessed on August 8, 2020

[32]Jenny Y. Liu Carrie Bai, ' Coronavirus in the Chinese Law context: Force Majeure and Material Adverse Change' (Pillbury,March 16,2020)https://www.pillsburylaw./en/news-and-insights/coronavirus-in-the-chinese-law-context-force-majeure-and-material-adverse-change.html.com , accessed on August 10, 2020

[33]R&P Law , 'COVID-19 and Force Majeure in China'(Conventus Law website, May 5, 2020)http://www.conventuslaw.com/report/covid-19-and-force-majeure , accessed on August 15,2020

[34]Cukurova Finance International Limited v Alfa Telecom Turkey Limited [2013] UKPC 2 (Privy Council, 30 January 2013)

[35]Mcmillan LLP, ' Material Adverse Effect clauses in a COVID-19 World' (global legal group website, 24 June, 2020)https://iclg.com/briefing/13604-material-adverse-effect-clauses-in-a-covid-19-world, accessed August 16 2020

[36] [2013] EWHC 1039 (Comm)

Future Design of The MAE Clauses (Post Covid-19) In the International Context

Entities across the globe proposing to enter into any business acquisition agreement post COVID-19 would specifically focus on the documentation process (with special attention on the Phraseology) of the MAE/MAC clauses.

1. **From the Buyers' point of view:** Buying entities would focus on drafting an extensive and comprehensive MAE clause so as to include:
   (a) Global spread of any infectious agent
   (b) Significant fall in the stock value of the target business
   (c) Serious economic disruption caused by general market shocks or any unprecedented events (with special reference to the inclusion of Pandemics and Epidemics) where there is higher rate of deterioration in the financial condition of the target as compared to the generality of the risk in the market.
   (d) Decline in the prospects of the industry in which the target company operates(for example, the Entertainment and Travel Industry is shattered by the COVID-19 outbreak, which may be used by the buyer a ground for invoking the MAE clause in the agreement)

2. **From the sellers' point of view:** Sellers should be very conscious in reducing the possibility of MAE/MAC clause being invoked by the buyer by designing or negotiating to draft the MAE/MAC clauses in the following manner:
   (a) Raising the threshold for determining the effect of an unprecedented event on the possibility of performance of the contractual obligations.
   (b) Setting a minimum "Termination Fee" restricting the buyer from moving out of the deal citing Material Adverse Event (MAE) sans solid grounds in the form of compensation.
   (c) Confining the scope of the MAE clause to internal risks suffered by the selling entity.
   (d) Setting up of Independent, Impartial Arbitrator in case of disputes in the purchasing agreement as speedy resolution of disputes is favorable for the selling entity.

Conclusion

In nutshell, invoking MAE clauses on the basis of the occurrence of COVID-19 is largely a subjective question. In many acquisition deals entered prior to COVID-19, the buyers failed in their attempt to walk away from their respective deals citing MAE as the traditional MAE clauses were tailor made in sellers' favour, that is it was predominantly "seller-friendly". But, during and post COVID-19, the scenario may change as the nature of adverse effect COVID-19 has on target entities is expected to be "very high" as analyzed by market experts.

Also, the impact of COVID-19 on M&A deals is devastating, the repercussions of which is hardly felt by many small entities already in the midst of the pandemic. But, in conclusion, it can be said that the COVID-19's qualification as a MAE is dependent on the specific contract in question, it definitely, has deteriorated the financial reporting quality of many entities, thereby affecting the current and future earning potential of the selling entities, at least in the short-run.