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Identifying & mitigating Coronavirus risk

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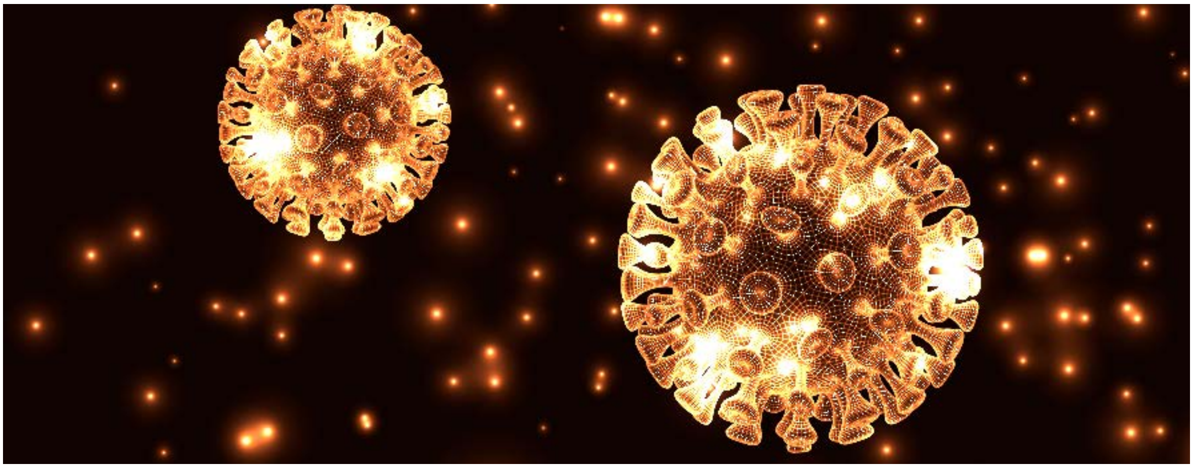


10 steps for mitigating coronavirus risk

As the coronavirus disease threatens to become a worldwide pandemic, the business ramifications range from a temporary disruption to a virtual halt of operations, writes **Aaron Nicodemus**.

As the coronavirus outbreak threatens to become a worldwide pandemic, the ramifications for any business can range from a temporary disruption to a virtual halt of operations. The worst-case scenario is mass quarantines, widescale mandated business shutdowns, scores of sick employees, and massive supply chain disruption.

What exactly is a pandemic? The U.S. Centers for Disease Control and Prevention defines a pandemic thusly: "Pandemics happen when new (novel) influenza A viruses emerge which are able to infect people easily and spread from person to person in an efficient and sustained way. Because the virus is new to humans, very few people will have immunity against the pandemic virus, and a vaccine might not be widely available." The coronavirus has been described as a novel virus. First detected in December 2019 in Wuhan, China, it spread globally to more than 50 countries, sickening more than 100,000 people and killing about 3,200 as of March 6.

Health officials warned that coronavirus outbreaks are likely to occur in the United States. Outbreaks are considered less severe than pandemics, but outbreaks will force local governments to enact procedures that will cause significant disruptions to businesses. Here are 10 steps your business can take to mitigate risks in case of a coronavirus pandemic.

1. Follow the advice, warnings, and guidelines issued by federal, state, and local government. In many cases, your business will not have a choice. If a coronavirus outbreak morphs into a pandemic, quarantines will be mandatory, businesses will close, and travel will be restricted or banned in hard-hit areas. Health facilities will be overwhelmed, emergency response times will be slowed. There will be warning signs that such measures are coming, but they may evolve rather quickly. Watch for regular, widespread health alerts coming from local governments and if they start ramping up efforts to control the pandemic.

2. Closely monitor the health of employees. In China, this has come to mean checking the temperature of everyone arriving and leaving work and sending anyone with a fever home to a 14-day quarantine. That may seem extreme, but clearly, sick employees should stay home. Stress prevention measures like hand-washing and good hygiene. If the local healthcare system becomes overwhelmed, ramp up employee access to third-party doctors or telemedicine. Employees should learn a protective mask can prevent a sick person from infecting someone else, but will likely not prevent a healthy person from getting sick.

3. Establish a pandemic preparedness plan. If your office or workplace can work completely remotely, establish a plan to do so. If that is not possible, identify key employees who need to be at the workplace and establish a schedule where they come into physical contact with as few coworkers as possible. Limit visits to the workplace by vendors and suppliers. Establish a policy for deliveries to be made to the workplace without employees coming into contact with delivery drivers. Prepare to operate workplaces with a skeleton staff, where most everyone works from home but a few employees rotate into the office on a weekly basis.

4. Communicate, communicate, communicate. Keeping employees up to date on emerging threats—and the company's response—is of the utmost importance. Spin up your company's crisis communications now—even though the outbreak is not yet a crisis, advised James Green, director of Risk Advisory Services at SAI Global. An informed employee is much less likely to panic and overreact. Employees should be encouraged to watch for signs of sickness in themselves and fellow co-workers and know to whom they should report their concerns.

5. Convey financial risks posed by the coronavirus. With disruptions to supply chains and offices, stores, and businesses shut down, there are real threats to a company's bottom line in the short and long term. Public companies need to convey these risks to shareholders and regulators.

6. Plan for major supply chain disruptions. In response to the growing coronavirus threat to their supply chains, some businesses have taken steps to reduce their production capacity by 5-10 percent for the next few months, and delay shipments of product by weeks or months, said Green. "Companies should be prioritizing delivery to customers based on revenue and relationships," he said.

7. Re-examine coronavirus risks associated with third-party suppliers. In addition to the usual risks, analysts should look at risks associated with the countries their suppliers operate in, and those risks should be continuously monitored and updated, said Brian Alster, general manager of third-party risk & compliance at Dun & Bradstreet. If at all possible, start searching for alternative sources for critical components in your supply chain, he said.

8. Be prepared for travel bans. China currently has a mandatory 14-day quarantine on all visitors entering China, according to Kent Kedl, a partner with Control Risks, a global risk consultant group. Quarantines and travel bans in South Korea and Italy are similarly snarling business travel. Some companies have chosen to ban employee travel to regions hardest hit by the outbreak. Travel bans may upend plans for conferences scheduled for the next 3-6 months, especially those with attendees traveling from abroad.

9. Expect international consumer markets to be hit—hard. Already, China's huge appetite for consumer goods has taken a demonstrable hit, only three months into the coronavirus crisis. Expect that it will get worse before it gets better. And the coronavirus' effect on consumer markets in other Asian countries, and perhaps even Europe and the Middle East, are as yet unknown and unpredictable.

10. Keep an eye on deliveries. E-commerce and manufacturing firms should be concerned they won't be able to ship products to and from China if there's a pandemic. The delivery industry in China is robust and healthy, perhaps even buoyed by the crisis, according to Kedl and a recent story in the *New York Times*. Anecdotally, everyone in China is having food delivered to their homes, Kedl said. But delivery employees are putting themselves at risk by doing deliveries. If they start getting sick, an entire lifeline to the quarantined vanishes inside China, and companies that depend on rapid and regular deliveries face a huge problem. ■

Coronavirus leads to China's corporate ghost towns

China's economy may be stuck in neutral for months by mandated quarantines, business shutdowns, and resistance from local authorities to issue work resumption permits. **Aaron Nicodemus** reports.

Kent Kedl, a partner with Control Risks, a global risk consultant group specializing in global risk analysis in Greater China and North Asia, and an expert on U.S.-China relations, says many offices in Shanghai are shut in the wake of the coronavirus outbreak. Factories in the region are open, but most are operating with skeleton staffs.

"In crisis planning, you always have a plan for supply chain resiliency," he said. "Usually, the worst-case scenario is losing a critical supplier. No one has ever thought you need a plan for a national supply chain going down."

While the country's leaders in Beijing are pushing for factories to fully reopen, local authorities are much more reluctant to issue the necessary permits, he said. In order to reopen, factories need to obtain a work resumption permit from the local government. Obtaining the permit requires the company to have all employees pass a health screening process, have supplies like masks and sanitizer in place, and hit a number of other benchmarks.

Vicky Yu, quality & compliance manager for Asia Quality Focus, a Shenzen-based quality control service provider for local and foreign companies, advised companies "to set up local team or leader to lead the compliance and preparation of work resumption." The leaders should keep employees informed at each stage of the process, she said.

As a result of the government restrictions, most white-collar workers are working remotely, Kedl said.

Remote access

With China in the grip of a coronavirus outbreak causing major disruptions to daily life and commerce, many employees are working remotely. And while businesses have had more time than usual to react to this "slow-developing catastrophe," it does not mean they should cut corners on data privacy protection, said James Green, director of Risk Advisory Services at SAI Global. "We've been telling our clients they should plan for a long disruption" to their business because of quarantines and forced business shutdowns, he said.

It is wise to have as many employees work remotely as possible, Green said. But remote work brings its own share of compliance risks, he said, because employees may be forced to access sensitive company data over unsecured networks. "Ideally, you want employees to gain access to a company's network only through secure channels," he said. Companies should try, as much as possible, to keep in compliance with their own internal policies for protecting data, as well as the laws of the country they work in. "You don't want to create a second problem," he said.

Four out of five data breaches in 2019 were caused by hacking or unauthorized access, according to a report released in January by the Identity Theft Resource Center. Accessing sensitive company data from an unsecured network can open a pathway for both of these methods. Employee error, accidental web exposure, physical theft, and insider theft caused the remaining data breaches, the ITRC said. ■

—Aaron Nicodemus

A few offices are open in shifts, with only a fraction of the workers arriving on any given day. Local authorities take the temperature of all employees when they arrive at work and when they leave, Yu said.

The coronavirus outbreak in China, which began in late 2019, has infected more than 80,000 people worldwide and has killed nearly 3,000, according to the *New York Times*. Feb. 26 marked the first time more new cases were reported to the World Health Organization from outside China than from inside, the newspaper reported. More than 40 countries have reported coronavirus infections, including, for the first time, a country in South America: Brazil.

As a result, companies are seeking to protect their employees. Nestlé SA, the giant Swiss food and beverage company, announced it will ban all business travel by its 29,100 employees until March 15, to avoid contracting or spreading the coronavirus.

"Nestlé shares global concerns over the spread and impact on public health of coronavirus (2019-nCoV). We take our responsibility for our employees and to the communities in which we operate seriously and continue to follow the advice of public health organizations," the company said. "As a precaution, we have asked all of our employees worldwide not to travel for business purposes until March 15, 2020. We will review this measure in light of external developments."

In January, several multinational firms banned or limited employee travel to China. Kraft Heinz, JP Morgan Chase, Ford Motor Co., Hershey, Apple, and others suspended business trips to China, according to the *Wall Street Journal*. Some have since expanded bans to other hard-hit countries like South Korea and Italy.

Even if an employee travels to China, he must self-quarantine for 14 days, Kedl said. "It really puts a crimp on a company's ability to move employees around," he said. Kedl, who has lived in China since 1994, said it's more serious than any other flu epidemic China has faced. "People are nervous. They are self-quarantined. Shanghai is a ghost town. It's really weird," he said. He was excited to see a traffic jam outside his apartment the other day—but it quickly cleared, "and it was back to the zombie apocalypse." ■

Building sustainable business continuity programs for resiliency

Authored by **Tony Rock**, Vice President, Leadership & Operations, NAVEX Global

Complexity breeds both opportunity and risk. This simple truth underpins the multifaceted struggle that all organizations must engage in every day. As firms of all sizes become increasingly dependent upon international markets, supply chains and workforces, the potential risks posed by world events continue to grow in both severity and variety. This is especially true of global threats such as international conflict, environmental disaster or pandemics, as they can affect multiple components across a variety of business processes. Further, the growing size and scope of these events almost guarantee they will impact entire markets in unanticipated ways, to unknown effect. This, paired with the tragedy of the commons, can often lead businesses to eschew planning efforts, relying instead on outside intervention from governments and NGOs.

However, while global crises can appear intimidating, they are fundamentally not dissimilar from other forms of business risk. In fact, large-scale events like pandemics are best understood—and addressed—not as singular threats but as composites of business risk. Every organization routinely faces a variety of risks to their operations, logistics, etc. To mitigate these risks, all firms should adopt sustainable business continuity management programs that address key processes, are rigorously tested and comprehensively reviewed, and are continuously monitored and updated. Properly configured, such a business continuity program will ensure organizational resiliency, enabling businesses to effectively manage the cascade of interconnected disruptions caused by global risks.

Cataloging Key Processes & Building a Program

Every effective business continuity plan begins with a thorough accounting of all an organization's key processes. This starts in consultation with the firm's department heads and the chief executive team, creating an inventory of all processes to assess which ones are instrumental to the organization's core functionality. This should include all major operations, as well as inbound and outbound logistics including supply chains and distribution networks. All four of a given processes' key components—people, resources, vendors and assets—should be identified.

> To be truly resistant, a business continuity plan must account for the organization's present, not its past. In some respects, relying on an obsolete business continuity plan can be more dangerous than having no plan at all, as it can provide a false sense of security.

Once key processes have been determined, organizations should build plans designed to address potential disruptions. Alternative suppliers or transport options should be identified; staffing plans for critical human resource losses should be detailed, etc. Articulating these preliminary plans is the critical first step in building a functional, resilient program.

Testing & Reviewing Business Continuity Plans

Once preliminary plans are in place, organizations should begin the process of testing and review. Testing generally begins with the construction of "what if" scenarios. When testing business continuity with respect to global risk events, firms may want to start with questions such as "What if large-scale protests disrupt the government in country 'A'?" or "What if a volcano erupts in region 'B'?"

With scenarios defined, table-top exercises can be conducted to review the impacts and effectiveness of a business' continuity plans. Testing for global threat scenarios can be especially valuable, as events that are geographically remote may have profound impacts on key processes that may not otherwise be readily apparent. For example, 2017's Hurricane Maria damaged several key Puerto Rican factories responsible for producing the IV bags U.S. hospitals use to administer medication, triggering a nationwide shortage. Global threat scenario testing of an organization's business continuity plan can help firms anticipate such risks.

After testing, companies should conduct a review to identify and address potential conflicts and/or additional resulting complications. Often, a plan will have unforeseen consequences for adjacent processes or components; a different supplier may impact your staffing or resource needs, for example.

Testing and review can help ensure that these unintended effects are also accounted for. Plans also need to be evaluated to ensure they meet all relevant compliance and contractual mandates.

Monitoring for Resiliency

Crucially, all risk must be continuously monitored, with plans updated to reflect any and all changes. Business processes are necessarily fluid, as are the broader circumstances surrounding them. Vendors, suppliers, staff and resources change over time, impacting business operations and logistics. Similarly, world events such as natural disasters and geopolitical changes can alter an organization's processes.

To be truly resilient, a business continuity plan must account for the organization's present, not its past. In some respects, relying on an obsolete business continuity plan can be more dangerous than having no plan at all, as it can provide a false sense of security. Over the past decade, there have been several prominent instances where the negative effects of a major risk event have been exacerbated by the fact that a business' continuity plans were out of date, listing vendors, suppliers and people who were no longer appropriate, relevant, or—in at least one instance—living. Continuous monitoring allows an organization to identify and proactively address these changes.

Ensuring Plan Access & Availability

Finally, it is critical that a business' continuity plan be up-to-date and easily accessible. Given the continuously changing risk landscape that modern businesses face, particularly with respect to global events, it is impossible for organizations to achieve this through paper-based systems or spreadsheets alone. Single pane of glass solutions can help organizations effectively manage their business continuity plans by providing a single unified and universally accessible hub.

However, planners must also be cognizant of the fact that systems access may not always be available, particularly in the case of a natural disaster or similar event. For this reason, organizations should always make regularly updated hard copies of business continuity plans, as well as online backups. Achieving organizational goals requires that business processes perform as intended. But when processes are at risk, firms need to know they can rely on business continuity plans that are carefully curated, comprehensive and current.

By adhering to best practices for key process identification, rigorous testing and review, continuous monitoring, and universal accessibility, firms can be properly positioned to recover when processes are interrupted or disaster strikes.

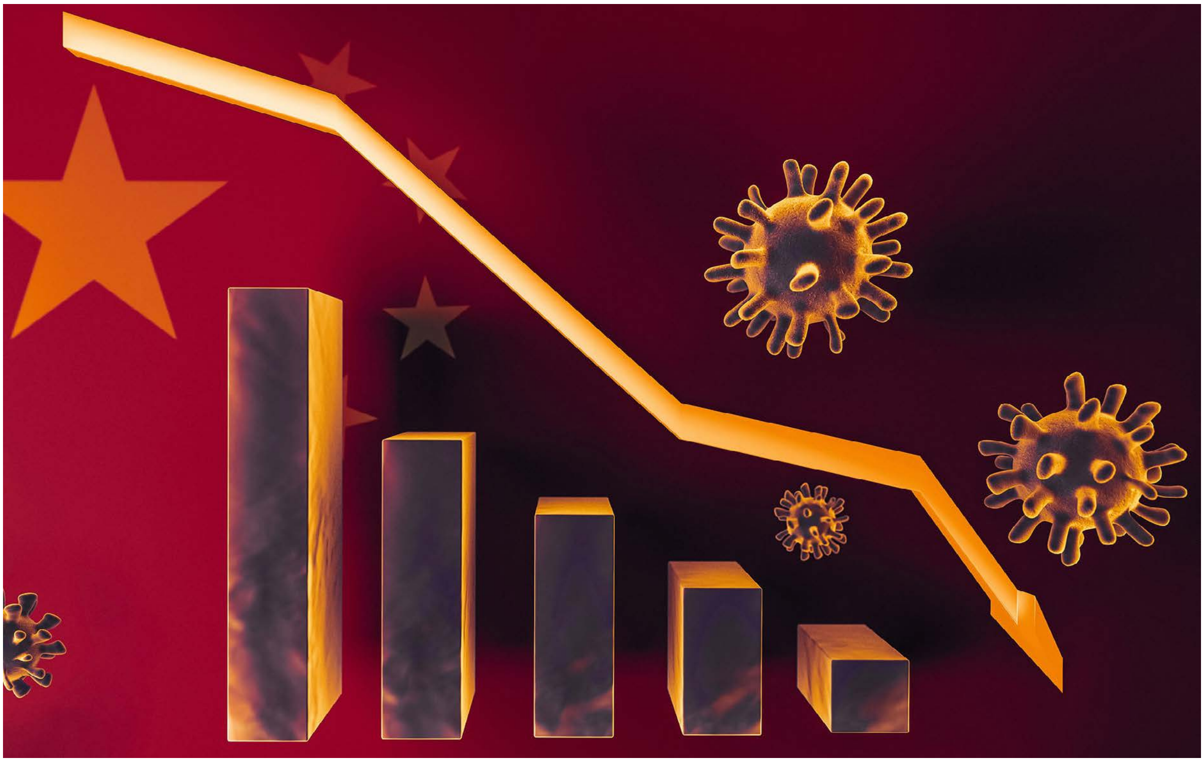
Rock

TONY ROCK, VICE PRESIDENT, LEADERSHIP & OPERATIONS, NAVEX GLOBAL

Tony Rock brings extensive leadership experience in finance, operations, and technology to his role. Rock's career path has taken him from Accenture to startups to private equity to China. He's touched a multitude of industries, including energy, healthcare, food/agribusiness, consumer goods, high-tech, software, aerospace, professional services, and industrial products.

Along the way, Rock has served nearly 100 operating units, yet somehow found time to earn an MBA in Finance and Marketing, as well as his Chartered Financial Analyst (CFA) designation.

Given his many accomplishments, Rock's true north is in driving revenue for innovative companies poised for growth.



Coronavirus impact on tech, medical, retail industries

Surrounded by uncertainty, the coronavirus outbreak has quickly catapulted high on the list of hot risk topics for business leaders everywhere. **Jaclyn Jaeger** has more.

Nobody can say with any real certainty how widespread the coronavirus outbreak will become or what overall or long-term impact it will have on market economies and global trade. Surrounded by such uncertainties, the pandemic has quickly catapulted high on the list of hot risk topics for business leaders everywhere.

A recent analysis conducted by FactSet finds that, among 364 S&P 500 companies that conducted fourth-quarter earnings conference calls from Jan. 1 through Feb. 13, 138 (38 percent) mentioned "coronavirus" (also called COVID-19) during the call. Among 11 total sectors analyzed, the highest number of companies that discussed the coronavirus on earnings calls were in the industrials (26), information technology (26), and healthcare (24) sectors.

Of earnings calls analyzed by Compliance Week, all executives stressed the health of their employees, business partners, and customers take paramount priority over worries about business continuity and recoverability plans at this time. Still, from a business impact standpoint, this has meant the temporary shutting down of factories and the closing of storefronts, restaurants, hotels, offices, and more in the affected regions, resulting in the significant disruptions to business operations, global supply chains, and global trade across all industries.

Delays in production and product delivery, capacity challenges, and industry-wide port congestion are just a few of the risk management hurdles companies are going to have to overcome for the foreseeable future. Alexandre Ricard, chairman and chief executive officer of alcoholic beverage company Pernod Ricard, summarized the current situation succinctly: "The reality is, over the last few weeks, COVID clearly impacted our performance in China—clearly impacted, let's be clear, not just our business, but China as a country."

In the short term are revenue losses. Tech giant Apple, for example, announced on Feb. 17 it does not expect to meet the revenue guidance it provided for the March quarter due to two main factors: iPhone supply shortages and reduced product demand in China. "All of our stores in China and many of our partner stores have been closed," Apple said. "Additionally, stores that are open have been operating at reduced hours and with very low customer traffic."

In the hospitality industry, Hilton Worldwide has closed roughly 150 of its hotels in China, to date, totaling approximately 33,000 rooms, said Chief Executive Officer Chris Nassetta on a Feb. 11 earnings call. Wynn Resorts, too, ceased its casino operations in Macau on Feb. 5. "During this time, while the casino is closed, our operating expense burn rate is roughly $2.4 million to $2.6 million a day, and that's largely comprised of payroll to our 12,200 employees," Wynn Resorts Chief Executive Officer Matt Maddox said on the company's fourth-quarter earnings call.

Government-required factory shutdowns in China are also impacting manufacturing for several companies. Hyundai Motor Company, for example, on Feb. 7 announced a work stoppage related to the manufacturing of its vehicles in China, resulting in the partial disruption of production for all its models and totaling $35.4 billion, or 45 percent, of lost sales revenue. As a countermeasure, Hyundai said it is increasing its supply from domestic and Southeast Asian suppliers.

Tesla, too, is experiencing delays in the production of its Shanghai-built Model 3. "This may slightly impact profitability for the quarter but is limited as the profit contribution from Model 3 Shanghai remains in the early stages," Tesla Chief Financial Officer Zachary Kirkhorn said on a Jan. 29 earnings call.

The fast-food industry is also taking a hard hit. Ka Wai Andy Yeung, chief financial officer of Yum China Holdings—which owns such brands as Pizza Hut and KFC—said during a Feb. 6 earnings call it has experienced "significant interruptions" due to the "temporary closure of our restaurants, as well as substantial decline in sales to the restaurant that remained open." To date, Yum China has closed more than 30 percent of its restaurants.

Other restaurants that are taking a hit to their business include McDonald's, which said it has closed hundreds of its restaurants in China. Starbucks, too, announced it has closed more than half of its stores in China and that it "continue[s] to monitor and modify the operating hours of all of our stores in the market in response to the outbreak of the coronavirus."

A state of limbo

Other companies have been less willing, or are unable, to accurately estimate the full business impact. According to Factset's analysis, 34 percent of executives among the 138 companies said during their earnings call they were not including any impact from the coronavirus in their guidance at all.

Walmart, for example, said in its latest earnings call, held Feb. 18, that it continues to monitor the Coronavirus outbreak and "has not included any potential financial effects in its assumption."

Royal Caribbean similarly announced in a Feb. 13 update on the coronavirus that "too many variables and uncertainties" remain to make a reasonable forecast for 2020. From a risk management standpoint, the cruise line company said it has expanded its boarding restrictions, modified several of its itineraries, and has cancelled a total of 18 sailings in

> "The reality is, over the last few weeks, COVID clearly impacted our performance in China—clearly impacted, let's be clear, not just our business, but China as a country."
>
> Alexandre Ricard, Chairman and CEO, Pernod Ricard

Southeast Asia to date.

Many companies continue to adjust their financial outlook as rapidly as the virus is spreading. For example, Ralph Lauren—which FactSet originally included in its analysis as one company that did not originally include any potential impact from the coronavirus outbreak in its guidance—turned around and announced on Feb. 13 that its fourth-quarter fiscal 2020 guidance is "now estimated to be negatively impacted by $55 million to $70 million in sales and $35 million to $45 million in operating income in Asia, driven by current trends in China, Japan, and Korea."

Apparel and footwear company Under Armour CEO Patrik Frisk said in a Feb. 11 earnings call that, while supply-chain challenges from a material, factory, and logistics standpoint could have a significant material impact on its business for the year, it's "electing to stay appropriately prudent and not prepared to quantify many of these elements today, as events could meaningfully evolve in the coming weeks." Frisk said, currently, it's only contemplating a first-quarter revenue impact to the APAC region, which it estimates to be about $50 million to $60 million, due to the "almost 600 mono-branded Under Armour doors in China currently closed."

In the medical device industry, Medtronic Chief Executive Officer Omar Ishrak commented during a Feb. 18 earnings call that, as the Chinese healthcare system focuses on containing the spread of the virus, "hospitals in China have experienced a slowing of medical device procedure rates, and we are seeing procedure delays," he said. "We do expect this to have a negative impact on our fourth-quarter financial results, but given the fluidity of the situation, the duration and magnitude of the impact are difficult to quantify at this time."

A silver lining

Companies that will most efficiently be able to weather the storm are those that can realize business opportunities created by forces of market change, as China-based e-commerce company Alibaba Group said it is doing. In a Feb. 13 earnings call, Chief Executive Daniel Zhang noted how more employees are choosing to work from home and more consumers are migrating to online purchases of groceries and other daily necessities—the sort of services that Alibaba's online retail business caters to.

Others, drawing on past industry experience as it relates to severe acute respiratory syndrome (SARS) in 2003 and similar outbreaks, even expressed optimism about the long-term growth trends from the coronavirus outbreak. "The experiences we have had with similar situations in the past … show that, after a period of disturbance, consumption resumes stronger than before," L'Oréal Chairman and CEO Jean-Paul Agon said in a Feb. 6 earnings call. "Therefore, at this stage, and assuming this epidemic follows a similar pattern, we are confident in our capacity this year, again, to outperform the beauty market and achieve another year of growth in both sales and profits."

Coca-Cola Co. CEO James Quincey cautiously noted China's economy was in a much different place during SARS. "The effect was not particularly noticeable from a business point of view," he said on a Feb. 21 earnings call. "It's worth noting China's economy is much bigger, and this could become more connected to the rest of the world." ■

SEC: Potential impact of coronavirus on audit quality

Jaclyn Jaeger has more on the SEC and PCAOB joint statement regarding recent talks about audit quality oversight concerns.

The Securities and Exchange Commission and the Public Company Accounting Oversight Board issued a joint statement providing an update on their recent conversations with audit firm leaders regarding audit quality oversight challenges in China, including the potential impact of the coronavirus on financial disclosures and audit quality.

The SEC and the PCAOB have been trying for years to gain greater access to China-based firms and auditors whose work is relied on by U.S. investors. In 2019, the SEC met with senior representatives of the four largest global network auditing firms to discuss audit quality across and challenges faced in auditing public companies with operations in emerging markets, including China, the largest emerging market economy.

The 2019 discussions were part of the SEC's ongoing efforts to address the issues highlighted in its December 2018 statement on the vital role of audit quality and regulatory access to audit and other information internationally. "We expect to have similar meetings with other U.S. audit firms that, through use of their own networks or otherwise, audit U.S.-listed companies with significant operations in emerging markets, including China," the agenices said.

Collectively, the four largest audit firms through their global networks audit the financial statements of approximately 140 China and China-based, U.S. exchange-listed, public companies, based upon audit reports issued in the 12 months ending Dec. 31, 2019.

Among the issues discussed during the November 2019 meetings is that the PCAOB continues to be prevented from inspecting the audit work and practices of PCAOB-registered audit firms in China on a comparable basis to other non-U.S. jurisdictions. "PCAOB inspections are a key component of our regulatory efforts to enhance the quality of financial reporting and ensure audit quality," the agencies said.

Because the PCAOB is restricted in its inspection efforts in China, the SEC made it clear in the 2018 meetings that it expects U.S. audit firms "to bring appropriate increased attention and resources to their internal and cross-network quality control processes."

SEC and PCAOB staff have reconvened with senior leaders of the four largest U.S. audit firms to discuss their efforts addressing various issues, "including the potential exposure of companies to the effects of the coronavirus and the impact that exposure could have on financial disclosures and audit quality, including, for example, audit firm access to information and company personnel," the agencies said.

U.S.-listed companies may have significant operations in China and other jurisdictions that may be affected by the coronavirus. Also, those that do not have operations in China or other potentially affected locales may depend on those with operations in those jurisdictions, including, for example, as suppliers, distributors, and/or customers, the agencies noted.

Developments surrounding the outbreak remain a "dynamic situation," and the impact may be difficult to assess since it may depend on factors beyond the control and knowledge of issuers, SEC Chair Jay Clayton noted. "However, how issuers plan and respond to the events as they unfold can be material to an investment decision, and we urge issuers to work with their audit committees and auditors to ensure that their financial reporting, auditing, and review processes are as robust as practicable in light of the circumstances in meeting the applicable requirements," he said.

"Issuers and their advisers are encouraged to contact SEC staff regarding any need for relief or guidance," the SEC said. "Based on these communications and its continuing monitoring of the situation, the staff will determine whether to provide additional guidance and relief as appropriate for affected parties. Relief may be made available on a case-by-case or broader basis as circumstances merit." ■

Can 'force majeure' save you from the coronavirus?

Some businesses avert disastrous financial losses caused by the coronavirus outbreak. **Aaron Nicodemus** reports.

Some businesses—particularly in the global shipping industry—are hoping a provision contained in the fine print of many contracts can avert disastrous financial losses caused by the coronavirus outbreak.

The provision is a legal term known as force majeure. Taken from French civil law, force majeure is "a contract provision that excuses a party's performance of its obligations under a contract when certain circumstances beyond their control arise, making performance inadvisable, commercially impracticable, illegal, or impossible," according to a recent coronavirus and force majeure story in The *National Law Review*.

Force majeure has been invoked in the past by companies seeking to explain contractual failures stemming from the Sept. 11 terrorist attacks, Hurricane Sandy, SARS, and Ebola. But the international response to the coronavirus—quarantines, shutdowns, and travel bans—has upended business as usual around the world in an unprecedented way, said attorney Gregory Bombard, a partner at the law firm Duane Morris.

Companies seeking to escape liability for failing to deliver the terms of a contract are scrambling for the legal cover to do so, he said. "They want to know: Who bears the risk if we can't deliver?"

"With emergency measures impacting on goods, workers and logistics, many suppliers appear unable to fulfil their contracts within the prescribed time, or at all. But invoking force majeure may also be of interest to buyers, either because taking delivery under the contract has been impacted or due to disruptions in downstream markets."

National Law Review

Invoking force majeure means fulfilling the terms of the contract is literally impossible, Bombard said. Not too expensive. Not really, really inconvenient. Impossible.

"It's not necessarily a free pass for companies to cite force majeure," he said. "It's very fact specific and case specific." Courts have historically been reluctant to enforce force majeure claims, he said.

During the coronavirus crisis, some industries might have stronger force majeure claims than others, according to a recent blog post by the law firm Baker McKenzie.

"Force majeure claims are particularly relevant for contracts with a long-term or ongoing supply," the post said. Those included contracts dealing in commodities like iron ore, coal, and copper; liquid natural gas; ship building; supply contracts for textiles, foodstuffs, and mechanical equipment; electrical equipment and electronic components; and medical equipment manufacturing.

"The effect of the outbreak on suppliers is perhaps most obvious," the post said. "With emergency measures impacting on goods, workers and logistics, many suppliers appear unable to fulfil their contracts within the prescribed time, or at all. But invoking force majeure may also be of interest to buyers, either because taking delivery under the contract has been impacted or due to disruptions in downstream markets."

Life preserver?

Some businesses have only just started to dig out their contracts to re-examine the wording of their force majeure provisions. The global shipping industry, however, has already seized on it as a possible life preserver.

The China Council for the Promotion of International Trade (CCPIT), a quasi-public Chinese government agency, has issued 3,325 so-called "force majeure permits" to Chinese shippers since February, worth $38.5 billion, according to the Financial Times. The permits attempt to shield Chinese shippers from potential lawsuits stemming from their failure to deliver on contractual terms.

One of the world's largest shippers, CMA-CGM, alerted its vendors in February that it is currently in a "force majeure situation."

Invoking force majeure is an industry-wide response to a situation that has been worsening each day since the beginning of 2020, said Patrik Berglund, chief executive officer of Xeneta, a Norwegian company that advises Fortune 500 companies on global shipping.

"I've never seen so much bad news travel so fast," he said, noting he does not believe the coronavirus crisis is nearing its end. "If you'd asked me a week ago, I'd have been optimistic. But not now."

By invoking force majeure provisions, everyone is looking for some form of protection from uncertainty and disruptions, Berglund said.

Invoking force majeure is "a pointing game to try and pass on the costs/consequences of substantially reduced global value generation—I don't think it will play out nicely or quietly," he said. ■

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