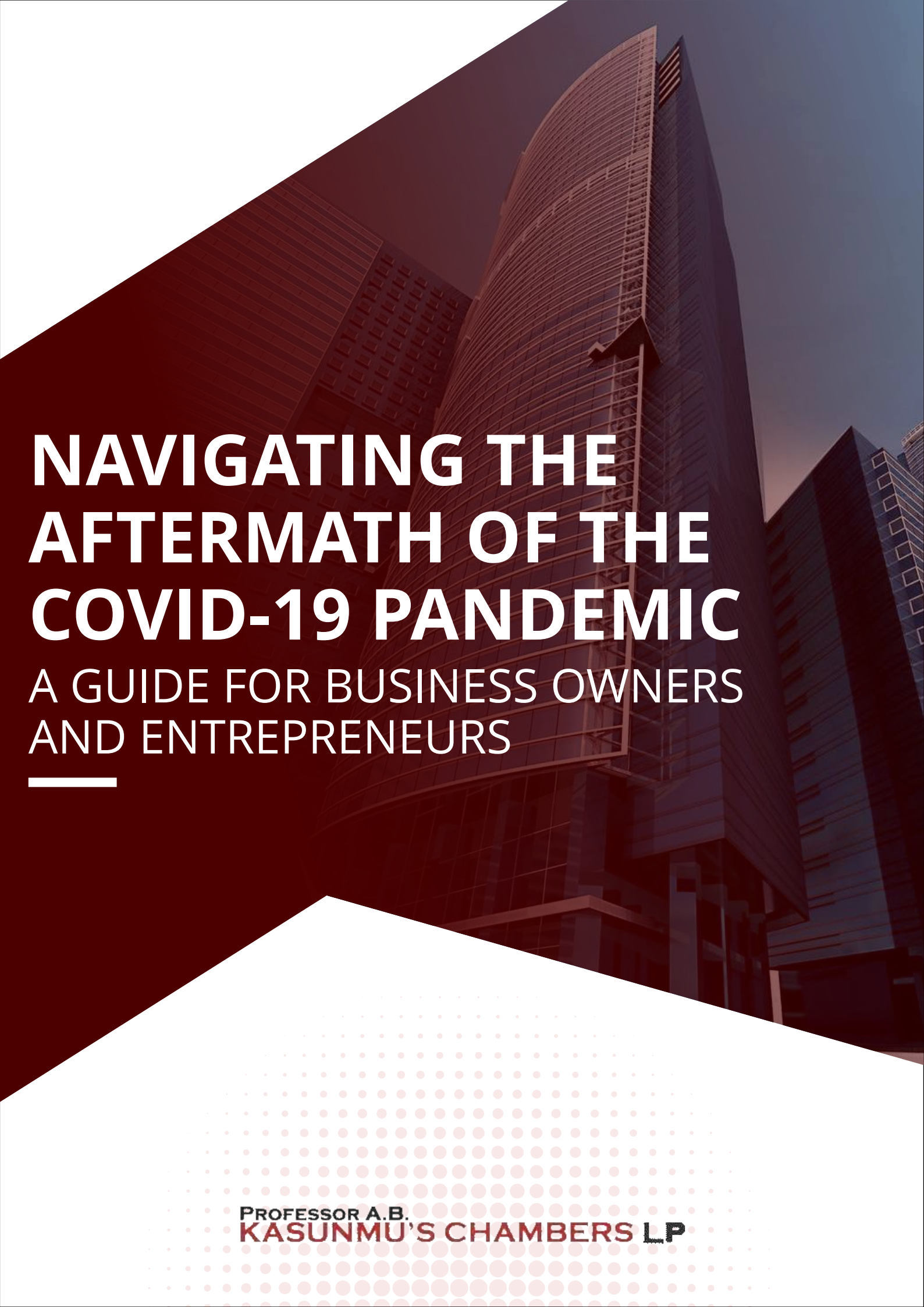




NAVIGATING THE AFTERMATH OF THE COVID-19 PANDEMIC

A GUIDE FOR BUSINESS OWNERS
AND ENTREPRENEURS

PROFESSOR A.B.
KASUNMU'S CHAMBERS LP

ABSTRACT

Mostly and generally, entrepreneurs face various issues that daily threaten the survival of their businesses. More so, this fact has become apparent in the face of the current pandemic that has affected the economic sector globally and has contributed to the collapse of several businesses worldwide. There is no doubt that the revenue streams of most businesses have been hampered due to the lockdown imposed at the initial outbreak of the pandemic. The ability of entrepreneurs to successfully navigate and transit through this phase will go a long way to determine the continued existence of their businesses.

INTRODUCTION

The COVID-19 pandemic took the world by surprise and generally changed many things about life as we know it. To curb the spread of the virus, governments in various countries implemented policies that led to the shutting down of all activities in their countries save for services and industries deemed essential. This has in no little way affected various sectors of the economy in different countries and contributed immensely to the downturn of the global economy. During this period, the activities of businesses have been largely affected as many companies had to resort to working remotely while some had to cease doing business.

Interestingly, some businesses were well equipped for this sudden change, but most were not. With the ease of the restrictions imposed during the pandemic, some challenges have begun to surface leaving most businesses struggling to cope. In light of global occurrences as a result of the pandemic, the sustainability of businesses in these times is of utmost importance.

Admittedly, the pandemic has forced most businesses and business owners to think out of the box and go beyond the norm, thereby forcing them to be innovative in carving solutions beneficial to the continued existence of their businesses. There are several crucial areas [post pandemic], that business owners should now pay close attention to for the continued survival of their businesses. Some of these areas are highlighted and discussed below.

1. Contractual Obligations

As a result of the pandemic, most businesses are being faced with difficulties especially as concerning the performance of some of their contractual obligations. Parties have had the course to consider options available to them legally, to determine whether they can be excused from the performance of the obligations under their contracts. One of the options available to such parties is to rely on a force majeure clause¹ if included in their contracts. It is important to note that the doctrine of force majeure cannot be implied in a contract and has to be expressly included in the contract. Where this is absent, parties cannot rely on it for non-performance of their contractual obligations.

In situations where a force majeure clause is absent in the contract, parties can rely on the doctrine of frustration² to avail them. Since an occurrence such as the current pandemic could not have been within the contemplation of the parties, the doctrine of frustration can be relied upon to discharge the parties from the performance of their future contractual obligations, if successfully and timeously invoked.

Another option that parties can consider is a variation³ of the terms of the contract. Parties can mutually agree in writing to vary the terms of the contract, where the subject matter of the contract can still be performed. However, where the subject matter of the contract is time-bound and parties are unable to fulfill their obligations, a variation of the contract may not be the appropriate step to take.

2. Restructuring of Loan Facilities

At the onset of the pandemic, the Central Bank of Nigeria [CBN] approved regulatory forbearance for the restructuring of credit facilities in OFIs (Other Financial Institutions) sub-sector from 9% to 5% per annum and a one-year moratorium⁴. In addition, the CBN granted leave to financial institutions to consider temporary and time-limited restructuring of the tenor and terms of loans granted to businesses affected by the COVID-19 outbreak. As a result of this, financial institutions have been giving moratoriums on principal debt repayments and an extension on loan maturities.

Knowing that most businesses have suffered financial losses due to the pandemic, the restructuring of their loans if any, will allow them to generate enough revenue before their loans become due for repayment. Also, it will be in the interest of entrepreneurs to maximize the opportunities given via the available funds released by the government and other investors which will go a long way to help businesses get back on their feet as long as the funds are well utilized.

3. Rent

Like most contractual agreements in these times, a review of the lease agreement for properties used for commercial purposes is paramount. Without a doubt, the pandemic has caused a shortage of cash flow on the side of parties to lease agreements especially for commercial properties. Of utmost importance is the renewal of subsequent tenancies. A business owner, unable to pay rent that has fallen due, and who has also not generated sufficient income due to the pandemic, will neither be in a position to discharge its payment obligations nor renew its tenancy for another term.

The only way forward in resolving such an issue is by dialogue since there are no direct regulations or government policies that protect Tenants from being evicted in these times. A dialogue may likely lead to a waiver of the rent for a period or a reduction in subsequent rent to be paid including the service charges. Indeed, these are unprecedented times that call for understanding, empathy, and forbearance.

4. Employment

In most countries, Small and Mid-size Enterprises (SMEs) form a large percentage of employers and have helped to achieve sustainable growth in the economies of these countries. However, with the pandemic, many entrepreneurs had to scale down and or suspend their business operations and have experienced a downturn in the growth of their businesses. As a result of the pandemic, many employees have been relieved of their jobs and source of income due to downsizing, while some employers have had to change their mode of business operations. In essence, the rate of unemployment has increased greatly in these times with most employers looking for ways to minimize the losses caused by the pandemic.

This period is quite delicate for both employers and employees alike. Just as employers seek to find ways of ensuring that their businesses do not suffer additional losses, employees also do not want to lose their source of livelihood. Certain issues will need to be discussed and mutually agreed upon to avoid a breach of employees' contract of employment. Some of the approaches adopted by employers globally include- furlough, pay cuts for high ranged staff, reduced allowances, reduced work hours, cutbacks on expenses, and unpaid leave. Most importantly, employers must keep the lines of communication open to relieve any uneasiness from employees.

5. Workplace Structure

The need for proper organizational structures could not have come at a better time as businesses that do not have adequate internal structures, stand the chance of losing more in these times than others. The growth of businesses in this period will hinge on the structures put in place and these will serve as a guide to employees who will have to make necessary changes to their work ethos. For instance, since the outbreak of the pandemic, working remotely has become a norm. With proper internal structures in place, employees will be greatly aided in continuing their tasks without any disruption or interference.

An understanding of the structures that exist in an organization will go a long way to help promote continuity, a healthy corporate culture, and further enhance high performance resulting in productivity and growth of the business.

CONCLUSION

Although the pandemic took most businesses globally by surprise, creativity and resilience are of utmost importance in these times to ensure their sustainability. The ability to see the opportunities that abound in a situation such as the pandemic will go a long way to help revive businesses that have suffered losses in these times. This will also determine the continued existence or extinction of such businesses.

ENDNOTES

1. Force Majeure Clauses - According to Black's Law Dictionary are contractual provisions that address circumstances in which contractual performance becomes impossible or impracticable due to events that could not have been foreseen, and are not within a party's control.
2. Frustration is a common law doctrine which recognizes the setting aside of a contract where an unforeseen event has either rendered contractual obligations impossible, or radically changes the party's principal purpose for entering into the contract. Parties can rely on frustration where there is no force majeure clause in their contractual agreement.
3. Variation of contract takes place when parties mutually agree to make changes to their original agreement. For it to take effect both parties have to agree prior to the changes and it should be in writing.
4. <https://www.cbn.gov.ng/Out/2020/FPRD/CBN%20POLICY%20MEASURES%20IN%20RESPONSE%20TO%20COVID-19%20OUTBREAK%20AND%20SPILLOVERS.pdf>

DISCLAIMER

The above stands as an independent opinion of the firm and is not to be construed as legal advice.

**For more information
on the above,
please contact us at:**

 **enquiries@kasunmuschambers.com**