



Advisory Update on COVID-19

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March 2020

INTRODUCTION

This advisory update has been prepared to provide practical measures for managing the impact of COVID-19 or Corona Virus on the operations of companies/businesses operating in Nigeria.

ADVISORY UPDATE

Commercial Contracts

We understand that there may be concerns on how to deal with commercial contracts and any interruptions in performance of obligations as a result of the impact of the Covid-19 virus. Supply contracts, construction contracts and other similar contracts where performance may be hindered or rendered impossible as a result of the impact of the virus come within this category.

Commercial contracts usually include “**force majeure**” clauses which operate to suspend or excuse performance in the event of an occurrence beyond the reasonable control of the parties. **It is important for companies and/or businesses to verify if their contracts include “force majeure” clauses and the extent to which, if at all, the force majeure can be triggered in the context of this current pandemic.** Where performance is impossible and the contracts do contain applicable force majeure clauses, then the relevant notices and protocols should be triggered.

In the event your contracts do not include “**force majeure**” clauses, or the clauses are not appropriate to cover the current pandemic, you will need to explore what alternative legal remedies or options that may be available to you. In addition, questions such as whether any loss or business interruptions that you may suffer or subjected to are covered by insurance policies and the extent of such coverage are vital issues facing most businesses now.

Employee Matters

Employers have an obligation to provide and maintain a safe and healthy work environment for employees and visitors. This is more critical now whilst the world is battling with a global pandemic. Employers should issue **COVID-19 updates** to employees based on **information and updates made available by the World Health Organisation and the Federal Government of Nigeria.** Since more restrictions are expected as the situation escalates, remote work systems should be put in place to ensure business continues to operate.

Employees who may require self-isolation as a result of exposure to a carrier or travel to or from a highly impacted location, must report to the authorities for mandatory testing and work from home. Companies should consider sick leave or time off work in line with their company policy for non-core employees.

In the event of extended disruptions to business operations or instances where an employer is unable to operate, such employers need to determine what options are available to them under the law vis-à-vis redundancies, lay-offs, reduced wages etc.

We advise employers to engage with their employees of all cadres to discuss the impact of the pandemic on their business operations and their contracts of employment; the likely impact on the ability to continue to provide work as the pandemic will inevitably impact the revenues of the businesses and as such, the resulting implication is that employment contracts may need to be altered.

The pandemic may also likely trigger redundancies. Such redundancies should only be implemented after engaging with the employees in line with the employment contracts of the employees, the company's policy and any collective bargaining agreement between the company and any trade union acting on behalf of the employees.

Data Privacy Issues

Employers may have concerns about conducting health surveys and temperature checks on employees and visitors and implications of the Nigerian data protection regulations; these actions are now necessary to protect employees, visitors and the general public.

The current COVID-19 pandemic in our view allows for a lessening of strict data privacy regulations. Some of the instances where processing of personal data is lawful include where it is "necessary in order to protect the vital interests of the Data Subject or of another natural person" and "necessary for the performance of a task carried out in the public interest"

Health surveys and temperature checks are necessary to protect employees, visitors and the general public as it is in furtherance of efforts to contain a pandemic declared by the WHO. Therefore, such health checks are not in breach of applicable data privacy regulations.

Official Government Communication Channels

As the effects of COVID-19 on commercial activities continue to unfold, it is important to monitor official government advisory and guidelines on containing the virus. The Federal Ministry of Health, Nigeria Centre for Disease Control and the Lagos State Ministry of Health provide frequent updates for Nigeria. The official communication links are below:

Nigeria Centre for Disease Control: Website: <https://ncdc.gov.ng/>; Twitter; @NCDGov

Federal Ministry of Health. Website: <http://www.health.gov.ng/>; Twitter @Fmohnigeria

Lagos State Ministry of Health. Twitter: @LSMOH

Nigerian Civil Aviation Authority. Website: <https://ncaa.gov.ng>

Federal Airports Authority of Nigeria. Website: <https://www.faan.gov.ng>

We will continue to monitor official government communication and keep you updated on any developments that may impact the operations of businesses in Nigeria.

If you need any clarifications; our offices will continue to provide support to our clients during this difficult period.

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