



CENTURION

Lawyers and Business Advisors

**COVID-19 LEGAL
UPDATE:
NIGERIA**

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EMPLOYMENT

REDUCING EMPLOYEES' WORKLOAD AND PAY DURING THE COUNTRY PANDEMIC/ LOCKDOWN WITHOUT TRIGGERING REDUNDANCIES.

Generally, an employer cannot unilaterally alter the terms of employment. The employer may modify an employee's workload, work hours and corresponding salary upon agreement with the employee.

OUTSTANDING LEAVE DAYS AND FORCED PAID LEAVE OR UNPAID LEAVE DURING THE PANDEMIC/LOCKDOWN. DEDUCTING QUARANTINE PERIOD FROM ANNUAL OR SICK LEAVE

Outstanding Leave Days:

It is against an employee's right guaranteed by the Labour Act, Cap L1 Laws of the Federal republic of Nigeria 2004, (the 'Act') to force an employee to do any act against their will. However, under the exigent circumstances of the pandemic, employees can be asked to take outstanding leave days, subject to their consent. In this case, the employer will still be bound to pay the employee's remuneration.

Forced Paid/Unpaid Leave:

Employers cannot force any employee to do any act contrary to the contract of employment, such as to require an employee to take unpaid leave except if it is provided in the contract of employment. However, this can be arranged during this COVID-19 pandemic based on an agreement between the parties. The employer can urge the employee to proceed on paid leave or negotiate for an unpaid leave with the employee.

Deducting quarantine period from annual or sick leave:

Although quarantine is not provided in the Labour Act, we believe that an employer cannot deduct the quarantine period from the employee's annual or sick leave periods. This is because both annual and sick leaves are entitlements of the employee guaranteed under the law which must be observed accordingly.

RENEGOTIATING TERMS OF EMPLOYMENT

Terms of employment can be renegotiated during this period. Parties are free to negotiate and enter into a new contract as they deem fit.

REMOTE WORK



Unless parties agree otherwise, an employer will be required to pay the full salary of the employee who is unable to work remotely but cannot come in to work because of the shutdown.

EMPLOYMENT ENTITLEMENTS AND BENEFITS WHILE WORKING REMOTELY DURING PANDEMIC/ LOCKDOWN

Unless the employment contract and benefits are renegotiated, the employee is entitled to the same benefits under their employment contract while working remotely. Note that benefits attached to on-site/office work, such as transportation allowance, may be deducted.

In addition, an employer may reasonably provide certain amenities to facilitate the employee's ability to work from home.

PERFORMING OTHER JOBS WHERE CORE FUNCTIONS ARE DOWN DURING PANDEMIC/LOCKDOWN

Employees are obliged to perform their assigned roles and ancillary services (if any) under the contract of employment. An employer cannot unilaterally modify the employee's responsibilities. These responsibilities may however be modified if the parties agree.

REDUNDANCY/TERMINATION OF EMPLOYMENT

There is no law that prevents employers from terminating the employment of certain workers. However, termination must be done in strict compliance with the law, employment contract and the company's employment handbook.

COMPANY COVID-19 POLICY AND COMPANY LIABILITIES

It is advisable for an employer to have clear policies on COVID-19 and health and safety measures.

Under the law, employers are under a duty to take reasonable care of the safety of their employees in all circumstances so as not to expose them to any unnecessary risk. See *Iyere v Bendel Feed and Flour Mill Ltd* (2008) 18 NWLR (Pt 1119), 300

Consequently, if the company fails to adopt and implement adequate health and safety measure, the company and its officers may be held liable should the employees become exposed to the virus at work.

EMPLOYMENT INSURANCE POLICIES (GOVERNMENT OR PRIVATE) DURING THIS PERIOD AND ACCESSING THESE POLICIES.

No employment insurance policy has been created specifically in response

to the pandemic.

However, private insurance companies offer employment insurance policies which may cover unforeseen events, such as the pandemic. The policy can be assessed through the insurance companies.

IMMIGRATION

CURRENT SITUATION IN THE COUNTRY

There is a full lockdown in three Nigerian states: Lagos, Ogun and the Federal Capital Territory, Abuja. There is partial lockdown in other states in the country.

TRAVELLING TO NIGERIA

A no flight order has been initiated in Nigeria. Foreigners are not allowed to enter into Nigeria at this moment as all land, air and sea entry points have been shut down except for those providing essential services.

A foreigner who is not rendering essential services will not be allowed into Nigeria even with a valid permit/visa.

RESTRICTIONS OR CANCELLATION ON VISAS APPLICATIONS/ISSUANCE

The government has suspended the issuance of visas, and cancelled all visas previously issued, to citizens of China, Italy, Iran, South Korea, Spain, Japan, France, Germany, the United States, Norway, UK, Netherlands and Switzerland for 4 weeks from 18 March 2020 and subject to review.

The Nigeria Immigration Service has announced a temporary suspension of passport and migrant e-registration from 23 March 2020 to 23 April 2020.

EXPIRATION OF LEGAL STATUS WHILE IN NIGERIA

Foreigners may be unable to leave the country as a result of the no flight order on commercial flights. Foreigners whose legal status may expire while this order remains active may notify and apply to the Nigeria Immigration Service to seek a special dispensation or an extension.

We understand that visa extensions are currently being carried out for foreigners in the country to validate their stay in Nigeria only. It is our opinion that foreigners who overstay during this period will neither be penalized or held in breach of their visa conditions.

LEAVING NIGERIA

It is unlikely that residents or expatriates will fly out from Nigeria as commercial flights are currently observing a no flight order.

However, countries may be allowed to evacuate their citizens during this period.

TAX

TAX EXEMPTIONS/RELIEFS DURING THIS PERIOD – EITHER GENERAL OR RELATED TO A PARTICULAR SECTOR

The House of Representatives has passed an Emergency Economic Stimulus Bill which grants:

- a 50% rebate to employers on employee PAYE tax to any duly registered employer under the Companies and Allied Matters Act who maintains the same employee status without retrenching their staff as at 01 March 2020 and till 31 December 2020;
- deferral of payment of mortgage obligations under the National Housing Fund; and
- Import duty waiver on medical equipment, medicines, personal protection equipment and other medical necessities required for the treatment of the corona virus effective from 01 March 2020 to 01 December 2020.

Note that this Bill is yet to be passed by the Nigerian Senate.

GRACE PERIOD FOR THE FILING OF TAX RETURNS

The Federal Inland Revenue Service (FIRS) has announced the following:

- extension for the filing of income tax and tax returns by one month and the taxpayer may file returns without an audited account. Provided that the audited account is submitted within 2 months after the extended date; and
- extension for the filing of value added tax and withholding tax from the 21st day to the last working day of the month, following the month of deduction suspended tax.

CORPORATE

SUSPENDING OBLIGATIONS UNDER A CONTRACT IN LIGHT OF COVID-19. (CONSIDERING FORCE MAJEURE)

Force Majeure

A party may be able to suspend its obligations under the force majeure provision in the contract.

Force Majeure (FM) relieves a party from liability for non-performance under a contract. An FM event generally refers to the occurrence of an event which is outside the control of the party affected by such event and which prevents that party from performing its obligations under the contract. FM is usually provided in the agreement and will not be implied into the contract.

Circumstances that constitute FM events are dependent on the exact wording of the contract. Some FM clauses may not directly refer to a pandemic or a disease outbreak as an FM event. In such cases, it may be argued that the spread of the corona virus or the ensuing government lockdown could be considered an “act of God”, or “other circumstances beyond the parties’ control which prevent the party from fulfilling its obligations” to which the FM clause will then apply.

To constitute FM and absolve a party from its obligations, the party must show that the FM event directly caused their inability to perform their obligation.

Frustration

Under Nigerian law, a party may also set aside or discharge a contract under the common law doctrine of frustration. A contract is frustrated when an unforeseen intervening event occurs that disables the performance of a contract. The unforeseen event makes performance of a contractual obligation impossible or makes the obligation fundamentally different from that which was initially agreed by the parties.

Nigerian courts have recognised the following events as constituting frustration: war, legal changes or statutory impossibilities or destruction of the subject matter.

A party may successfully argue that the pandemic constitutes an unforeseen event that prevents them from performing under the contract and thus rendering the contract frustrated. Frustration discharges the party from future performance under the contract.

COVID-19 AS A MATERIAL ADVERSE CHANGE IN A CONTRACT

Material Adverse Change (MAC) is not usually clear cut and will depend on the exact provision of the contract. In share purchase arrangements, mergers and acquisitions, the MAC provision outlines conditions that allow a party to walk away from a transaction. It protects the buyer/investor against any adverse changes to the business during a specific period. For a loan arrangement, MAC triggers a default and allows the lender demand early repayment if an event has had an adverse material effect on the borrower’s ability to repay the loan.

Investors and lenders need to review their contracts to determine whether the pandemic has triggered a MAC. An adverse change is material if it has significantly affected the business or the borrower’s ability to perform its obligation. It is likely that the pandemic will come to an end soon. Therefore, a major issue to consider under MAC is whether the borrower’s ability to perform under the contract remains adversely affected after the pandemic ends. If the borrower’s ability to perform is restored at the end of the pandemic, then it is likely that the court may regard the adverse change as immaterial.

REMEDIES FOR A PARTY’S FAILURE TO PERFORM ITS OBLIGATION UNDER CONTRACT

The aggrieved party can go to court or any other dispute resolution mechanism under the contract. They can claim damages for breach of contract or seek for specific performance.

REQUIREMENTS TO REGISTER DOCUMENTS UNDER THE COMPANIES REGISTRY OR OTHER MANDATORY FILINGS

The Corporate Affairs Commission can be accessed through its online platform. All corporate filings and payments can be done through this portal.

EFFECTS OF COVID-19 ON DELAYS TO OBTAIN REGULATORY APPROVALS

As at the date of this update, government agencies are not operating. We advise that regulatory agencies be contacted via their online platforms for any inquiry or submission of any application.

Where an agency lacks an online medium, we believe that it is unlikely that delays in obtaining regulatory approval during this period will be detrimental to an application. Please note that no extension or grace periods except those highlighted below have been announced.

The FIRS has advised taxpayers to use all available e-platforms for the purpose of filing tax returns, making tax payments and any correspondence with the tax authorities.

The FIRS has granted extensions for tax filings. These extensions listed above are reproduced below:

- extension for the filing of income tax and tax returns by one month and the taxpayer may file returns without an audited account. Provided that the audited account is submitted within 2 months after the extended date; and
- extension for the filing of value added tax and withholding tax from the 21st day to the last working day of the month, following the month of deduction suspended tax.

GENERAL

FISCAL MEASURES TOWARD COUNTERING THE ECONOMIC EFFECTS OF THE PANDEMIC

The Federal Government of Nigeria is proposing a N500 billion COVID-19 crisis intervention fund. This is currently being considered by the National Assembly (Legislature).

The Government has also announced plans to disburse monetary packages to indigent Nigerians.

NEW LAWS/REGULATIONS TOWARDS COMBATING THE PANDEMIC

Notable laws passed:

- Covid-19 Regulations 2020; to declare Covid-19 as a "dangerous infectious disease" in exercise of the powers conferred on the President of the federal republic of Nigeria by Sections 2, 3 and 4 of the Quarantine Act (CAP Q2 LFN 2004); and

Infectious Diseases (emergency prevention) Regulations 2020, effective on 27 March 2020 and passed by the Lagos State Government.

On the 6th of April 2020, 2 people were arraigned and convicted for committing an offence under the Infectious Diseases Regulations.

EFFECT OF THE PANDEMIC ON THE COUNTRY'S ECONOMY AND ANY RECESSION RISKS

As an oil producing country, the combined effect of the pandemic and the Saudi Arabia-Russia oil price wars have had a significant effect on Nigeria's economy. Oil prices fell to an 18-year low on March 30, 2020 and it is predicted that Nigeria's oil dependent economy, which has its national budget benchmarked on crude prices, will suffer significantly.

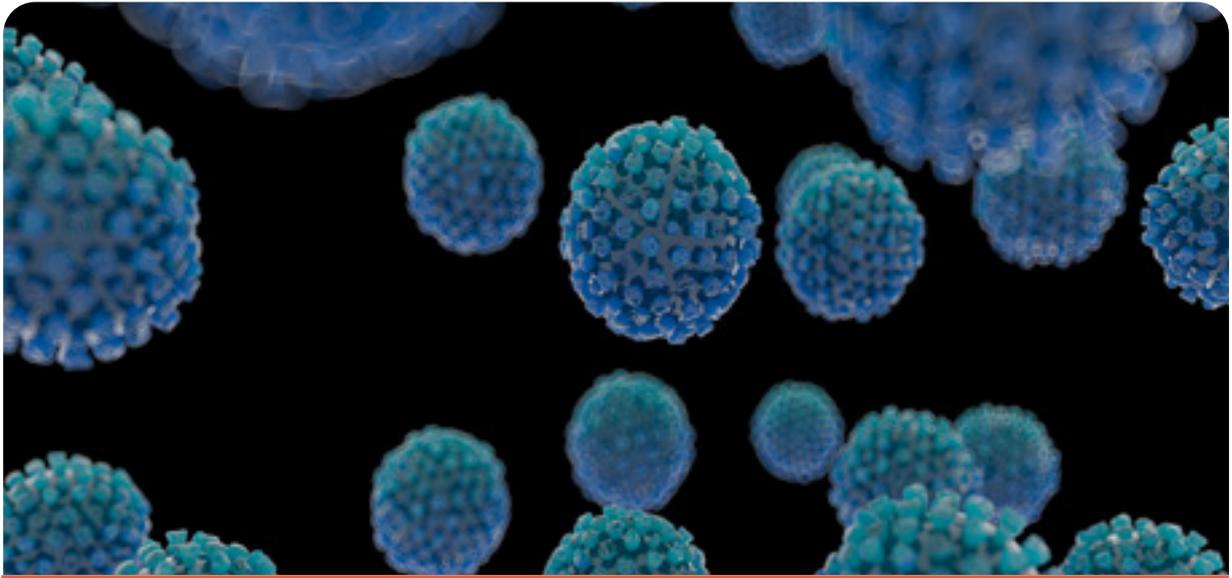
With the lockdown of borders around the world and disruption of the global distribution chain, companies relying on raw material will experience a decline in production and revenue. The decline in oil price, import and export has caused a decline in the country's foreign exchange. Scarcity of US dollars in the country has caused the Nigerian Naira to depreciate.

This crisis could lead to a recession in Nigeria and the devaluation of the Naira.

BANKING REGULATIONS OR RESTRICTIONS, BORROWER PROTECTIONS AND MORATORIUM ON LOAN REPAYMENTS

On 16 March 2020, the Central Bank of Nigeria (CBN) issued a guideline which includes the following:

- creation of a N50 billion targeted credit facility with support from NIRSAL Microfinance bank for household and small to medium sized enterprises that have been particularly hit by the pandemic;
- 1-year moratorium on all principal repayments effective from 01 March 2020;
- Interest rate deduction on all applicable CBN intervention facilities from 9% to 5% per annum for a 1-year period effective from 01 March 2020;
- A regulatory forbearance to all Deposit Money Banks (DMBs) on loan restructurings for deposit money banks going forward and a grant of leave to all DMBs to consider temporary and time limited restructuring of the tenor and loan terms for businesses and household most affected by the outbreak of COVID-19, particularly Oil & Gas, manufacturing and Agriculture;



- credit support for the healthcare industry; and
- support for industry funding levels to maintain DMB's capacity to direct credit to individuals, households and businesses.

See <https://www.cbn.gov.ng/Out/2020/FPRD/CBN%20POLICY%20MEASURES%20IN%20RESPONSE%20TO%20COVID-19%20OUTBREAK%20AND%20SPILLOVERS.pdf>

OTHER INFORMATION

Note that all Federal and State courts sittings in Nigeria were suspended for 2 weeks from 24 March 2020. On 08 April 2020, the Chief Justice announced an extension of this suspension until further notice. Only urgent, essential or time-bound matters will be heard during this period.

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