



The Novel Coronavirus (COVID-19)

Guidance Document

EGYPT

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CONTENTS

I.	INTRODUCTION	3
II.	PREVENTIVE CONTROLS	3
III.	DOES COVID-19 STAND AS A <i>FORCE MAJEURE</i> EVENT	4
IV.	EMPLOYMENT IMPLICATIONS	6
V.	BANKING AND FINANCE IMPLICATIONS.....	10

I. INTRODUCTION

Amid a crisis like the COVID-19 pandemic, corporations are dramatically confronting the adverse implications of this outbreak. A team of MBH lawyers produced this document to support corporations in tolerating these challenging impacts whilst providing a healthy, sustainable and productive work environment.

The purpose of this document is to provide some legal guidance and insights to corporations, including:

- Preventive controls (Section II);
- Does COVID-19 stand as a *force majeure* event (Section III);
- Employment implications (Section IV); and
- Banking and finance implications.

II. PREVENTIVE CONTROLS

In an attempt to reduce the spread of COVID-19 and keeping up with social distancing rules without business interruption, the General Authority for Investment and Free Zones (GAFI) permits the following measures for all corporations incorporated in accordance with Laws No. 159 of 1981 and 72 of 2017¹:

- meetings (including board meetings, OGM and EGM) can be convened electronically via teleconference (audio or video). In doing so, these corporations shall undertake all the necessary procedures enabling boards, managers, partners and shareholders (as the case may be) to vote. The minutes of any of the meetings referred to and the associated procedures shall be recorded onto a compact disc (CD).
- OGMs can be authenticated electronically via GAFI's official website. An authenticated copy of the relevant OGM will be delivered to the corporation. The corporation can request a hard copy that will be ready for receipt after fifteen (15) days from the date of authenticating the electronic version.

¹ GAFI Decree No. 160 dated 18 March 2020.

For listed corporations:

- the OGM can be adjourned through communicating the Egyptian Exchange and the Financial Regulatory Authority (FRA);
- may publish the change of the premises where the generally assembly would have conveyed to another safe premise;
- may upload a specific application for electronic voting on the company's official website where whoever desires to vote in such manner may submit this application prior to the date of general assembly by five (5) days provided that the company verifies the identity through a username and password, and coordinates with Misr for Central Clearing, Depository and Registry (MCDR);
- may postpone the submission of the financial statements for the year ending on 31 December 2019 to 30 April 2020 instead of 31 March 2020;
- may postpone the submission of the financial statement for the quarter ending on 31 March 2020 to 15 June 2020 instead of 31 March 2020;
- may benefit from the exceptional procedures by purchasing treasury shares to support share price; and
- may request to postpone the disbursement of profit sharing for those corporations that a decision of the OGM is issued in relation to such effect.

III. DOES COVID-19 STAND AS A *FORCE MAJEURE* EVENT

While the term 'pandemic/epidemic' may have been included in your contract among *force majeure* events, this does not necessarily mean that a contracting party is released from liability towards its non-performance.

The Egyptian Civil Code provides three cumulative conditions that must be satisfied for an event to be considered *force majeure*, namely: (i) the event inevitably renders the performance of the obligation impossible; (ii) the event must be beyond the defaulting party's control; and (iii) the event must have been unforeseeable.

A key criterion in determining whether the COVID-19 outbreak is a *force majeure* event, and not a comparable event such as *hardship*, is the inevitable impossibility to perform the obligation. In most civil law jurisdictions, both *force majeure* and *hardship* events impact the performance of a contracting party. However, the distinction remains that while a *force majeure* event renders the performance of the obligation inevitably impossible, *hardship* does not prevent the performance of the obligation, but renders it more onerous.

Given the above distinction, the remedies under *force majeure* and *hardship* differ. Under *hardship*, the Egyptian Civil Code renders the courts (or arbitral tribunals) the discretionary power to order the restoration of the economic equilibrium of the contract taking into consideration the interests of the contracting parties. Under *force majeure*, the courts (or arbitral tribunals) have the discretionary power to either rule (i) the rescission of the contract, thereby releasing the contracting parties from performing their obligations, or (ii) the suspension of the non-performed obligation until the expiration of the *force majeure* event if possible. Whether a court rules (i) the rescission or (ii) the suspension will mainly depend upon the extent of impossibility.

In the case of COVID-19, impossibility of performing contractual obligations will likely depend on the magnitude of a given city's lockdowns and/or shutdowns of relevant businesses, which accordingly would either make performance of an obligation either inevitably impossible in whole or in part.

In summary, as long as there is an impossibility to perform the obligation, the defaulting party may invoke the provisions of *force majeure*. It is important to note that the defaulting party is the one who bears the burden of proving such impossibility.

Force majeure and/or *hardship* related-advice:

- It is recommended to check the processes required for a *force majeure* notice under relevant contracts (time of serving this notice, details of how COVID-19 impaired any performance, such as the magnitude of the impact and the time to expected to resume performance).
- It is advisable for the contracting parties, as is practicably reasonable, to mitigate the impact of COVID-19.

- It is advisable that upon entering into contracts amid the crisis of COVID-19 to take into account the ramifications of COVID-19. (N.B.: under Egyptian law, *force majeure* risk can be contractually allocated to one of the contracting parties only).

IV. EMPLOYMENT IMPLICATIONS

The Prime Minister issued a decree no. 719 of 2020 (“**Decree**”) valid for fifteen (15) days as of 16 March 2020, and which has been extended for an additional (15) days, permitting employees working in ministries, governmental, public entities to work from home without the need to be physically present at work, as a precautionary preventative measure against COVID-19.

In addition to the above, employers must now inform the competent health authority of any employee that is infected or suspected of being infected with COVID-19. Employers are otherwise subject to penalties (i.e., a fine or two (2) months imprisonment), as per the Ministry of Health and Population decree no. 145 of 2020, which lists COVID-19 under the first section of infectious diseases stated in law no. 137 of 1958.

Private sector companies have been left to take the measures they deem necessary to limit the spread of infections at the workplace, while simultaneously ensuring they remain compliant with the Egyptian Labor Law no. 12 of 2003 (“**Labor Law**”). Accordingly, for ease of reference, we have set out below the different courses of action that could be adopted by employers to counter these challenging times and arranged them from most to least recommended.

- **Safety of the Workplace**

Many employers have already imposed a working from home policy, as the nature of their work permits. If business operations cannot be conducted remotely, employers should take the necessary precautions and measures to maintain a safe work environment. Accordingly, the Labor Law requires employers to provide means of occupational health and safety for the purpose of preventing all types of risks, including the risk of infection by bacteria and viruses.

The World Health Organization has set out some guidelines for safeguarding the workplace, which may be beneficial².

Leave

Employers may opt to place some of their employees on leave, regardless of whether or not they have contracted the virus, in order to limit crowding at the workplace, in accordance with the following:

- i. Sick Leave.** The Labor Law grants employees who are diagnosed with an illness, as evidenced by a medical certificate, the right to a sick leave with a salary compensation throughout their illness period. The Egyptian Social Insurance Law no. 148 of 2019 sets out the sick leave to be a maximum of 180 days in a calendar year, during which the employees' salaries will be paid as follows:

 - the first 90 days are payable at 75% of the social insurance salary; and
 - the second 90 days are payable at 85% of the social insurance salary.
- ii. Annual Leave.** Employees are entitled to a minimum annual leave of twenty-one (21) calendar days or thirty (30) calendar days if (i) they have been employed for more than ten (10) years; or (ii) they are over fifty (50) years old. From a legal standpoint, the employer has the right to determine the time and period of annual leave and therefore, employees could be required to take paid annual leave provided, of course, that they have sufficient leave balance available. Should an employee refuse, in writing, to go on leave on the dates determined by the employer, the employee shall be deemed to have forfeited his or her right to any monetary compensation for such unused leave days.
- iii. Unpaid Leave.** If the annual leave balance of the employees has been exhausted, employers may still place them on unpaid leave. However, employees cannot be forced to accept unpaid leave. Thus, it has to be mutually agreed upon in writing between both parties.

² World Health Organization, "Getting your workplace ready for COVID-19" (https://www.who.int/docs/default-source/coronaviruse/getting-workplace-ready-for-covid-19.pdf?sfvrsn=359a81e7_6) dated 3 March 2020.

Changing Work Conditions

According to the Labor Law, in the event of *force majeure*, employers may temporarily deviate from the conditions agreed upon in the employment contracts out of necessity, provided that the employees' rights are not violated or diminished in any way. Pursuant to which, employers may temporarily modify the working conditions to meet their needs and ensure the safety of the employees.

For your reference, we have listed below examples of the types of modifications that may be made at the workplace:

- assigning the employees to work that is different from the agreed upon scope of work, as long as it is not fundamentally different in nature;
- scheduling the employees' days off throughout the week, instead of the agreed upon days off (which are usually Friday and Saturday in the private sector), so as to not have the entire workforce on the premises at the same time; and/or
- adopting shift based working hours, if the nature of business allows it, while taking into consideration the curfew imposed by the Government from 7 pm to 6 am, as well as the closure of all public and private transportation for the same period.

Reduction of Salaries

Certain business operations have been negatively impacted by the current situation, which leads employers to contemplate the reduction of their employees' salaries to retain sustainability of the business. It is worth noting that such an approach may be considered a violation of the employees' most basic rights. Even if the written consent of the employees has been obtained, the Labor Law explicitly states that any action that derogates the rights of the employees arising from the employment contract shall be considered null and void.

Nevertheless, in the event that the employee is present at the workplace, but could not perform his work obligations due to reasons beyond the employer's control, the Labor Law permits the employer in such case to reduce the employee's salary by no more than 50%.

Lay-Offs

- i. **Redundancy.** The Labor Law granted employers the right to close down all or part of their operations or reduce their activity for economic reasons, which may adversely affect the size of their workforce. Such a process is carried out through a certain set of procedures whereby the employer must submit a request to the competent committee with sufficient evidence that the establishment is facing unexpected economic circumstances by which it becomes inevitably necessary to cut down its workforce. If the Committee approves, the employer will have the right to lay off certain employees with compensation or modify their employment terms (i.e. decrease in salary).

Unfortunately, this process is quite lengthy and complex and the committee responsible for looking into these matters does not convene regularly. Furthermore, due to the current circumstances, we cannot assess how operative labor offices would be.

- ii. **Termination.** Termination of employment contracts is quite strict under the Labor Law. Pursuant to the Labor Law, employers are only allowed to terminate employment contracts if they can prove that the employee (a) is not performing his or her obligations satisfactorily (i.e. inefficiency/bad performance); or (b) has committed a gross misconduct. Furthermore, the dismissal of an employee should be legally carried out through the proper judicial channels as set out by the Labor Law whereby such dismissal should be exclusively decided by the Labor Court. Failure to abide by these procedures creates grounds for an unfair dismissal claim by the affected employee(s).

Nevertheless, should an employer wish to proceed with termination, we advise seeking amicable termination of employment of the relevant employees. In an amicable termination of employment, the parties should agree on the termination of the employment relationship amicably by virtue of a written resignation upon receiving a severance and/or settlement payment. In case of indefinite term employment contracts, such compensation should not be less than two (2) months of the employee's comprehensive salary per each year of service, in addition to a compensation for the un-served termination notice, without prejudice to any other entitlements that might be

due to the employee (i.e. balance leave). However, in practice, if the employment contract is for a definite term, the compensation in this regard could be the total value of the employee's comprehensive salary until the expiry term of the employment contract.

V. BANKING AND FINANCE IMPLICATIONS

The Central Bank of Egypt (“CBE”) has also taken many initiatives to limit the spread of COVID-19 and alleviate its implications on the banking and finance sector. These initiatives are mainly as follows:

Postponing Credit Installments for Six (6) Months for Businesses and Individuals

The CBE issued several circulars on 15, 16, and 22 March 2020 addressed to Egyptian banks, prompting them to allow all companies and individuals a grace period on upcoming credit installments, for existing short or medium term facilities and personal loans, for a period of six (6) months as of 15 March 2020 (“**Grace Period**”). Such circular shall apply to all clients of banks registered with the CBE (whether natural or legal persons), and excludes any new credit facilities extended after 15 March 2020.

- i. Seeking the Grace Period.** Banks shall not impose any delay interests or fees on clients wishing to benefit from the Grace Period. Nonetheless, the relevant client will remain liable for the agreed interest rate throughout the Grace Period. In this regard, banks shall inform their clients of such additional interest to be incurred as a result of granting the Grace Period.

Although the clear picture is yet to be seen, we think that this initiative has to be taken with a grain of salt where the relevant debt is granted by syndication of local banks registered with the CBE, and it will not certainly apply where the debt is granted by foreign banks and financial institutions that are not subject to the supervision of the CBE.

- ii. **Flexible approach (Maintaining the status quo).** The CBE also gave clients the option to opt out from the Grace Period circular and continue payment of their debts according to the agreed schedule. This would be helpful for companies in some of the unaffected sectors who can avoid the application of additional costs to their loans.

However, the steps to be followed for implementing the provisions of the mentioned circular may differ from one bank to another. The CBE circulars do not establish clear criteria or a method for exercising this right. We recommend as a prudent step that companies submit a letter to their relationship bank informing the latter of the client's desire to follow this approach. The steps following that would be most probably a matter of mutual agreement between both parties on the adequate documentation and method for managing the amendments to the loan.

Decreasing the CBE Deposit rate, Lending Rate and Rate of Main Operation. The Monetary Policy committee ("MPC") of the CBE has also issued a circular on 16 March 2020 providing for the reduction of the overnight deposit rate, overnight lending rate and rate of the main operation by 300 basis points to become now 9.25%, 10.25%, and 9.75%, respectively. The discount rate was also cut by 300 basis points to become 9.75%. Additionally, the MPC has emphasized that it will continue to monitor all economic developments and will not hesitate to adjust its stance to achieve its price stability mandate over the medium term.

Establishing Maximum Limits for Cash Deposits and Withdrawals. Moreover, the CBE has set out a daily maximum limits for cash deposits and withdrawals by virtue of the CBE circular issued on 29 March 2020. Such limits amount to ten thousand (10,000) EGP for individuals, and fifty thousand (50,000) EGP for companies (excluding payments to employees). Furthermore, the CBE has set a daily maximum limit for withdrawals and cash deposits from ATMs by an amount of five thousand (5,000) EGP.

Exempting Local Transfers from all Fees and Commissions. The CBE issued a circular on 22 March 2020 to exempt all local transfers made in EGP from all fees and commissions related thereto.

Encouraging the Use of Electronic Means to Circulate Documents³. It is worth mentioning that banks may now create mobile banking accounts for their existing clients by using prior registered

³ CBE circular dated 15 March 2020.

information held by the relevant bank pertaining to identifying the clients.⁴ The CBE has further prompted banks to facilitate and waive fees for new subscriptions and transactions made through mobile and internet banking. The aim of these is to reduce the need to deal in physical banknotes as it poses a material risk in spreading the virus through the constant change between hands.

With the safety of our dedicated lawyers and clients as top priority, we stand ready to help clients through the unprecedented times ahead of us.

For further support or query, please contact us.

Stay safe and healthy.

Sincerely yours,

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⁴ CBE circular dated 20 March 2020.