

Coronavirus Outbreak in Rwanda-A Legal Alert for Businesses and Employers

1. The situation in the Republic of Rwanda with respect to Coronavirus (the “COVID-19”) has changed dramatically over the past few days. On the 14th March, 2020, Rwanda’s Ministry of Health confirmed the first Coronavirus case and from that time on the government adopted several measures including inter alia prohibitions of gatherings and restriction on travel & transport with the aim of limiting contact among people to a definite minimum. Apart from affecting the everyday human life, the outbreak has caused a unique impact on businesses especially those which require movement and physical interaction among people.
2. The purpose of the present guide is to explore certain issues regarding the impact of Coronavirus and suggest practical legal solutions to some selected areas of our practice. The assessment hereunder focuses on the existing commercial contracts and employment spheres only.
3. **COVID-19 and Business Agreements impacted**

The COVID-19 outbreak will definitely cause substantial impact on commercial agreements and contracting parties may soon find themselves in situations of material inability to perform their obligations under the agreements. Parties to contracts which stand a risk of being impacted by COVID-19 are advised to assess their legal rights and obligations with a focus on the provisions which have been or stand a risk to be

affected, ascertaining the legal consequences of a breach under the relevant contract clauses, identifying and observing the required notices etc. While parties whose contracts are still at drafting and negotiation stages are advised to anticipate the impact of COVID-19 and curve it under appropriate provisions to avoid otherwise preventable disputes in the future, those whose contracts are in force should inspect their force majeure clauses in light of COVID-19.

3.1 COVID-19: An event force majeure?

Force majeure refers to an event preventing a party to a contract from performing its contractual obligations and which event is beyond either party's control. This may include natural calamities such as a storm, a major political event including war, or a serious health crisis such as a general epidemic which renders a party to the contract incapable of discharging its contractual obligations. Under this article, we seek to understand whether the Coronavirus outbreak may be held to constitute an event of Force Majeure.

Applicability of force majeure in the context of COVID-19 would be dependent on specific facts and circumstances of any particular contract and one would ultimately need to first look at the specific content and language of the Force Majeure Clause¹ in the applicable contract to see whether or not pandemics, governmental restrictions or other relevant event or actions are explicitly covered before steps are taken to qualify COVID-19 as an event of Force Majeure or not. Should the contract have no Force Majeure Clause, the provisions of the law n° 45/2011 of 25/11/2011 governing contracts (the "Contracts Act") shall apply.

Article 92 of the Contracts Act provides “ *Where a party's performance is made impossible for reasons beyond her/his control including the absence of the object matter of the contract or another case of force majeure, his/her obligation of performance shall be extinguished, unless the circumstances indicate otherwise*”. In look at this article reveals two essential requirements in its the contemplation namely

¹ Force majeure clause generally operates to discharge a contracting party when a supervening, unexpected event beyond either party's foresight, skill and control makes performance impossible.

that (1) the event must prevent a party from performing its contractual obligations; (2) the event must be beyond either party's control. In addition to those two, another mostly documented condition is foreseeability of the event.

COVID-19 may be invoked as an event of Force Majeure depending on the type of the relevant contract and extent to which the area of its operation has been impacted by the outbreak. In addition to aiming at utilizing the Force Majeure rules, parties to contracts should explore their existing insurance policies to identify the risks of COVID-19 are covered.

3.2 Insurance Policies

While the COVID-19 is a viral pandemic and subsequent government restrictions have dramatically impacted the human life in general and business operations in particular, companies should explore their existing insurance policies and assess whether those may cover losses sustained from COVID-19 and disruptions related thereto. The scope of the possible coverage may extend from commercial properties whose operation was perturbed, business losses sustained as a result of quarantines, travel restrictions and/or closures.

The efforts in assessing the insurance policies should not only assess the insurance policies that may apply but also have a particular purpose of identifying any actions including notice required by the policy and accomplish them within the specified timeframes.

4. Coronavirus in light of employments and the labor law

Employers and employees are another class of people who will considerably be impacted by the COVID-19 outbreak. Matters of workplace, health & safety, place of work, working hours and many others are subjects which will undeniably be implicated. If the businesses are to close with exception to those trading essential items and services, employers shall need to know what the fate of their labor rapport with their employees will be. Below we provide practical solutions available to employers in response to the crisis caused by Covid-19.

5. Practical solutions available to Employers

Several solutions available to employers in response to the crisis caused by COVID-19 include amending the employment contracts, requiring employees to take accrued leave days, suspension of employment contracts and, last but not the least, dismissal for economic reasons.

5.1 Amending the employment contracts: Article 14 of the Labor Act provides “*The employment contract can be modified in the course of its execution at the request of either party and upon mutual consent*”. In response to the crisis caused by COVID-19, the employer may proceed to initiate amendment to the employment agreement and shall need to obtain the employee's consent. By amendment, the Employer may modify certain terms of employment including without limitation to the salary.

5.2 Requiring employees to take accrued leave days: For Employers whose businesses do not fall under “essential items and/or services” and which will therefore not continue during the period of lockdown, requiring employees to take accrued leave days would work as a suitable alternative. Under provisions of article 47 of the Labor Act, an employer is not permitted to postpone or bring forward a previously approved annual leave plan for more than a three (3) months period unless it is so agreed to by the employee. Employers resorting to this alternative should therefore ensure the employee's consent is obtained.

5.3 Suspension of employment contracts: Under article 18 of the Labor Act, execution of obligations under an employment contract may be suspended. The suspension of employment contract occurs due to, among other reasons, suspension of the enterprise's activities due to force majeure.

5.4 Dismissal for economic reasons: Dismissal of several or all employees is another option available to employers whose businesses are impacted by COVID-19. This

option requires the employer to observe the procedure and requirements set by the Labor Act.

Observations contained in this article are general views of the author in relation to selected aspects of the potential legal implications of the COVID-19 pandemic. The views may not necessarily be applicable to your case. For a fact-specific advice on your particular case, the team at CM Advocates remains available and committed to provide guidance and assistance for legal issues that may arise during and after the pandemic

Should you require further information or clarification on remarks presented in this article, feel free to get in touch with members of our team via the contact details on our website <https://cmadvocates.rw/>

