

Date: 23rd March, 2020

Dear Esteemed Clients,

We are closely monitoring the novel coronavirus (COVID-19) outbreak and rigorously implementing measures that prioritize the health and safety of our staff, clients and suppliers.

We already have in place, an effective remote working programme supported by technology, and therefore wish to assure you that the firm's operations will continue uninterrupted, while maintaining the highest level of service to our clients during this difficult time. We are limiting non-essential meetings and holding more client and other meetings via audio or video conferencing.

Our team will be reachable via mobile and email, as hereunder:-

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We remain your trusted advisors and are committed to delivering legal services throughout this period. We will share our insights on the unfolding developments via email and on our website and are available to advise on your concerns.

The Management

UPDATE ON COVID-19: WHAT YOU NEED TO KNOW:

On the 15th of March 2020, President Uhuru Kenyatta announced directives in the light of the outbreak of COVID-19 in Kenya.

In compliance with the Directive:

FROM THE COURTS AND REGISTRIES

- The **Ministry of Lands and Physical Planning** has closed all land offices and registries throughout Kenya for 28 days effective from Tuesday, 17 March 2020, which will also affect services at the Survey of Kenya Headquarters in Nairobi. Click [here](#) to read more;
- The **Business Registration Service** has suspended its services provided at Sheria House and the Companies Registry with effect from Monday, 16 March 2020. Whilst no timeline for the closure has been provided, the team is working to ensure some if not all the services will be accessible online. Click [here](#) to read more;
- The **Judiciary** announced that the public will not attend court effective Monday, 16 March 2020 (save for urgent matters). The courts will only hear urgent matters once a week, on Thursday, effective 19 March 2020 and each court will only use skeleton staff. The courts have scheduled other matters for a mention from 20 April 2020 subject to further direction. Click [here](#) to read more; and
- The **Directorate of Immigration Services** has indicated that it shall only provide very urgent Foreign National Services Management. This means effective Monday, 16 March 2020 one cannot process alien registration, endorsement of passports, extension of visas and walk-in to access any additional services. Click [here](#) to read more.

HOW WILL COVID-19 AFFECT THE PERFORMANCE OF YOUR CONTRACTS?

Key takeaways:

- COVID-19 is having an unprecedented impact on trade and commerce.
- Many parties will seek to rely on force majeure clauses or other contractual rights for relief from performance of contract obligations during this crisis.

What you need to do:

- Review your contracts and consider the impact that restrictions on trade, operability, travel and so on will have on yourself or your counterparts
- Examine force majeure clauses, if any, and consider whether they may now or in the future be used against you and seek advice.

We expect an uptick in litigation related to material adverse change provisions and force majeure clauses, as well as other legal bases for non-performance under commercial contracts, such as frustration of purpose. Companies should be aware of the notice provisions in their contracts relating to those clauses and others, including liquidated damages clauses and extension-of-time clauses.

HOW WILL COVID-19 AFFECT EMPLOYERS/EMPLOYEES?

Key takeaways:

Coronavirus raises potential employment law compliance issues related to, among others: the Employment Act, the Occupational Safety and Health Act, the Persons with Disabilities Act and equivalent statutes. Employers need to be aware of the precautions to take to protect their staff and of the employees' entitlements in relation to leave and sick pay.

Employers in Kenya have a duty under the Occupational Safety and Health Act, 2007 to provide for the safety, health and welfare of workers and all persons lawfully present at workplaces. Where possible, employers are encouraged to work remotely and to limit face to face meetings.

Where an employee exhibits symptoms or is placed under quarantine arising from work related travel or in the course of their employment, such an employee is entitled to sick leave as provided under their contracts of employment or by law. Under the Employment Act, 2007 after two consecutive months of service an employee is entitled to sick leave in the following manner:

1. sick leave of not less than seven days with full pay and thereafter;
2. sick leave of seven days with half pay

in each period of twelve consecutive months of service, subject to the production of a medical note.

Individual company policies/employment contracts may provide for longer periods of sick leave whether paid or unpaid.

Depending on individual circumstances, an employee may also choose to use up their annual leave entitlement at the discretion of the employer.

Change of employment terms:

There may be certain instances where an employer may be able to rely on the Common Law doctrine of Frustration of contract. Frustration occurs where the circumstances of the parties have changed, rendering the performance of the contract impossible or only possible in a very different way than contemplated. In the present situation, this may be brought about by government/state intervention in relation to COVID-19. It may also be argued that the COVID-19 pandemic is a supervening event that has led to a fundamental change in the continued performance of the contract. Advice would need to be taken on a case by case basis as the doctrine will only be applicable in the clearest of cases.

If an employer is of the view that the operational difficulties have drastically affected their business, they may have to consider having to declare redundancies. In this instance, employees are likely to be made redundant and the statutory process on redundancy must

be observed. With so much financial uncertainty, many employers are considering lay-offs to mitigate some of their losses. Before instituting any layoffs, we strongly recommend that you seek advice from experienced counsel.

We are continuing to closely monitor the evolving COVID-19 situation and will provide further updates. Should you require assistance with any related workplace concerns, please reach out to a member of our Team directly.

DISCLAIMER: This publication is intended to convey general information about legal issues and developments as of the indicated date. It does not constitute legal advice and must not be treated or relied on as such.