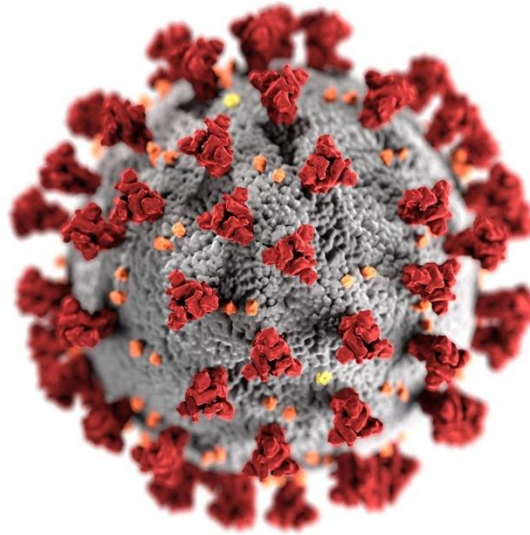


CORONAVIRUS



CONSULTATION PAPER & BEST PRACTICE GUIDELINES

FOR YOUR BUSINESS

BY

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PRO BONO & CORPORATE SOCIAL RESPONSIBILITY PROGRAM

CORONAVIRUS TASK FORCE

At MENA LEGAL, we believe that setting ourselves high professional and ethical standards and acting responsibly in our dealings with our clients and helping the communities where we operate is an integral part of our work. As part of our, Corporate Social Responsibility program we are happy to **offer to clients and anyone in need free consultation** and support on the matters related to the Coronavirus implications on their businesses and everyday life.

For that purpose, we have installed a
hotline under +971 4 243 8745
where you can reach us 24/7 for any questions, or you may address your request to:
info@mena-legal.com

WE CAN ASSIST YOUR BUSINESS WITH THE FOLLOWING PANDEMIC RELATED SERVICES:

- ✓ Monitors regulatory framework change and makes country reports on business affects
- ✓ Advise during executives meeting for further actions
- ✓ Preparing a business model review
- ✓ Assist for preparing a short-term business plan, risk impact and risk mitigation document
- ✓ Assist for sub-delegation and Power of Attorney
- ✓ Assist for succession planning of stakeholders and shareholders
- ✓ Assist for review of Incoterms and clauses related to transfer of risk
- ✓ Review the on-going and future commercial contracts
- ✓ Assess whether your situation or a cancellation of a contract could be justified by a force majeure
- ✓ Review the health and safety requirements in your industry and ensure the business is compliant
- ✓ Prepare a notice to the employees that describe the health recommendations prior and after infection
- ✓ Assist in organizing the work environment remotely
- ✓ Assist for implementing part time solutions, temporary reduced salaries or remedies alike
- ✓ Assist for regulating unpaid leaves
- ✓ Review of your Insurance Policies

NEW RESTRICTIONS AND REGULATORY FRAMEWORK

Under the leadership of the World Health Organization, all Governments, religious orders or social organizations attempt to slow down or even reverse the spread of the COVID-19 virus around the globe „*through the implementation of robust containment and control activities*“¹, i.e. to legitimately impose to their citizens/residents/members restrictions of various rights and freedom, and/or to increase regulatory requirements. These “Contain and Control” measures affect systemically our lifestyle, consumption habits and eventually our established way of doing business, which require systemic adjustments and execution of best practices.

Potential pandemic spread of the virus, additional legal restrictions and systemic snowball effect are expected to affect further business and individuals.

THIS CONSULTATION PAPER INTENDS TO PROVIDE YOU SOME INITIAL GUIDANCE ON HOW TO LIMIT THE IMPLICATIONS OF THOSE RESTRICTIONS TO YOUR BUSINESS AND PERSONAL LIVES.

THE MAIN RISKS

The Main risks for businesses are the following:

1. Loss of workforce due to death and illness.
2. Increased employee absenteeism and lower productivity due to family care obligations, social distancing, and fear of infection.
3. Reduced customer demand and ability to fulfil payment obligations.
4. Operational disruptions, including interruptions and delays in transportation networks and supply chains.
5. Disruption of financial stability, implications of cashflow, ability to pay suppliers, employees, utilities.
6. Threat of liquidation for already weakened businesses.
7. Reputational damage of organization in case of late or inadequate response.



The risks apply to all or most business and can be particularly acute for organizations in such areas as retail, hospitality, entertainment, and airlines.

¹ [WHO Statement 07.03.2020](#)

RECENT PREVENTIVE MEASURES OF UAE AUTHORITIES

1. Closing of nursery and temporary adjustment of labour law: [Parents of Children at Nursery](#)
2. [Closing of Schools](#) and [Adjustment of Holidays Period](#)
3. Travel restrictions: whomever travels may face preventative measures upon their return to the UAE - at the discretion of competent authorities - including undergoing medical checks at the airport, and a 14-day home quarantine. Those who test positive will be transferred to a designated health facility for treatment and quarantine to ensure their safety and to avoid contact with others: [Statement from UAE Govt](#)
4. Travelling, screening procedure: [Further Statements from UAE Govt](#)
5. Regular official news regarding COVID-19 reg. Travel restriction: [Emirates News Agency](#)

KEY QUESTIONS

1. Which products and/or services are of greatest value and how would revenue be affected by the situation?
2. Would we be entitled to not comply with contractual obligations as long as the *force majeure* situation persists?
3. Will our business plan continue working in the event of log downs, border closures, travel restrictions, or reduced exports of certain commodities?
4. What if we lose critical people, or have staff working from remote locations?
5. Will the fear of infection affect our key customer base?
6. How should we engage with public health and government entities?
7. What should we adjust in our business model, organization and contracts?
8. Who should we involve in our response efforts?
9. What sanitary/decontamination measures should be taken?
10. How can we secure cash flow and financial stability?
11. Shall we request employees to work from home?
12. May we require employees to take unpaid or paid leave?
13. What costs and salaries we may reduce with reference to the situation?



RECOMMENDATIONS

✓ KEY BUSINESS ADJUSTMENTS

1. Appoint a crisis management team (internal or external)
2. Appoint an employee or a consultant who monitors regulatory framework change (WHO channels², official Government gazettes or news website³) and makes country reports on business affects.
3. Frequent executives meeting and review of regulatory framework report for further actions.
4. Prepare a short-term business plan, risk impact and risk mitigation document.
5. Ensure appropriate sub-delegation of powers (Power of Attorney) in case a manager/decision maker becomes ill or avoid that he/she travels at all.
6. Seize opportunities generated by the crisis.
7. Focus on short-term solutions (three months effectiveness, renewable).
8. Audit your suppliers risk mitigation strategies (formally request a copy of their risk impact and risk mitigation documents) and, eventually, renegotiate the contract accordingly.
9. Extend your supply chain (geographically) or at least initiate discussion with competitors of your suppliers; in case of exclusive agreements, decipher the clauses with attorneys and see how to terminate or suspend it in case of exceptional circumstances such as the COVID-19.
10. Reduce overall costs and terminate not required services/suppliers where possible.
11. Defer unnecessary expenses and renegotiate with suppliers where possible.
12. Succession planning of stakeholders and shareholders.
13. Look for alternative revenue sources that may be less profitable but easier to generate.
14. Look for partnership opportunities that create synergies.
15. Pricing arbitrage to put in place.
16. Re-evaluate Incoterms and clauses related to transfer of risk; eventually, renegotiate them.
17. In construction/event project, re-evaluate the situation entirely: time for completion, products delivery, human resources related issues.

Recommendations



² <https://www.who.int/news-room/newsletters>

³ https://wam.ae/en/news_bulletin

✓ **REVIEW OF SUPPLY AND DELIVERY AGREEMENTS**

1. Review commercial contracts and renegotiate/discuss openly about potential delayed delivery: this may prevent contractual issues and legal arguments at a later stage.
2. Give extra and special attention to future contracts or PO (supply or delivery), especially regarding performance, delay, cause for delay.
3. Understand and do not overestimate the admissibility, in court or in practice, of the so-called *force majeure* clauses or provisions alike.

HOW STRONG IS YOUR *FORCE MAJEURE* CLAUSE?

A businessperson is obliged to perform an obligation, however, to a certain extent only: sometimes the obligation is to do its/her/hers best to reach an objective, sometimes it is to deliver a firm result or product, in time. All and especially the latter are subject of adjustments due to exceptional factors that make the performance of the obligation impossible.

For a court to consider it impossible to perform, the performance must truly be prevented by an event that is:

- a. external,
- b. unforeseeable, and
- c. that have proven, despite serious efforts, to be beyond its control or unsurmountable.

The laws of the United Arab Emirates like most other GCC countries consider these risks (kindly see Annex 1 for illustration of the laws).

However, there has been few precedents that help the courts to appreciate a situation. Hence, contractual provisions should regulate carefully these events and be subject of a fair negotiation between the parties.

MENA LEGAL recommends this exercise to be done for all future contracts or POs.

Additionally, purchase manager should make sure that their usual suppliers did not insert unfair clauses and should negotiate them if any.

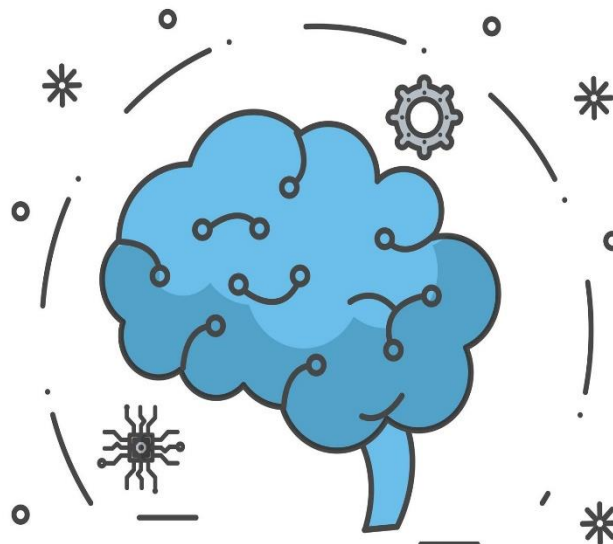


✓ HUMAN RESOURCE

We advise to adopt careful measures towards employees so to enable them and the company to sustain during the crisis and be back, allegedly, to normal situation in a few months.

The following best practices are advisable:

1. Monitor the regulatory framework regarding employers' health and safety.
2. Review the health and safety requirements in your industry and ensure the business is compliant.
3. Prepare a notice to the employees that describe the health recommendations prior and after infection.
4. Review your business sales/delivery/meeting practice that requires travelling, and the employer liability Insurance policy in case of occupational decease and/or death (infection during working hours or due to execution of work duties).
5. Promote solidarity between employees and the options of working remotely.
6. Rather than terminating employees, consider part time solutions, temporary reduced salaries or remedies alike. These adjustments are subject of agreement with employees; however, the risk of economic termination is high enough for employees to accept a distribution of the risks on all rather than on the company only. The adjustment must be in line with the applicable law and management of end of services gratuity in case of temporary reduction of salary, should be fair to the employee.
7. Consider regulating unpaid and paid leaves. We recommend organizing such measures in coordination with the employees and/or, when a substantial volume of employee is affected or for a long period of time, with the ministry of labour.
8. Quarantine situations are expected to be considered by the UAE/GCC courts as a situation of sickness under sick leave provisions, hence, subject of a medical certificate and of a certain number of days of leaves paid (UAE: 15 days), half paid (UAE: 30 days) and later on (UAE: 45 days), unpaid, after which the termination is possible.



✓ **INSURANCE POLICIES REVIEW**

Review the following insurance policies with your attorney or in-house lawyer:

1. Workers' compensation and employers' liability (regarding individual accidents and exposures to occupational diseases): medical expenses and reimbursement of lost wages?
2. General liability and umbrella/excess regarding (a) bodily injury and claims based on fear of exposure, exposure without actual symptoms. (b) presence of a virus in the property that generated a cost, (c) pollution by a contaminant (such as a virus?), to name few.
3. Directors' and officer's liability to prevent them from claims initiated by shareholders who allege a lack of preparedness for the potential effects on the event on the operations and revenues.
4. Medical insurance of employees.
5. Contract frustration insurance policy aim to prevent against risks of contract cancellation or default of payments or deliveries, etc.

It may not be the right moment to subscribe a new insurance policy, but this should not be underestimated.

CONCLUSIONS

Although the situation is or may become particularly problematic for some business, we recommend to allege that, based on historical facts, this crisis should be treated as a temporary event so that solutions found need to be adjustable back to the normal status of affairs or, eventually but considering a seriously low probability, into a definitive one.

Hence, especially for business with limited or inexistent cash flow or financial reserves, we insist on assessing carefully the need of immediately taken definitive measure that may lead to losing key human resources or key accounts.

We also suggest promoting solidarity between business partners rather than executing unfair opportunities.

THE AUTHORS

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Romain Astruc is a Civil Law specialist and Criminologist and has spent 10 years in the UAE advising MENA LEGAL's clients for their UAE, KSA and Qatar matters.

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ABOUT MENA LEGAL

MENA LEGAL represents a global network of law firms and is a member of the **B&A** (www.b-a.global), an association of various professionals structured as a Swiss Association, which provide a wide range of services on "one-stop-shop" basis to international corporations, small and medium sized companies and individuals.

Its members and individual experts have in-depth experience in matters of legal, tax, business consulting, accounting, property consulting, project finance and recruitment services, mainly with a focus on the markets of Europe, the Middle East, North Africa and beyond.

With over 30 years of personal and professional experience our members provide comprehensive and competent advice related to the business environment in various parts of the world, but also provide advice to regional entrepreneurs with respect to opportunities and legal matters in Europe, the Middle East, North America and Asia. With

member offices in Germany, Italy, France, the Netherlands, USA, United Kingdom, Switzerland the United Arab Emirates, Egypt, Jordan and Saudi Arabia, along with associated partners in various other countries, our members are positioned to offer hands-on support and on-the-ground services on a regional basis.

Our focus is on advising the following business sectors:

- ✓ Real Estate and Construction
- ✓ Engineering and Architecture
- ✓ Car manufactures and Supply Industries
- ✓ Logistics and Aviation
- ✓ Oil & Gas and Mining, Petrochemicals
- ✓ Fintech and Blockchain
- ✓ Renewable Energy and Environmental Technologies
- ✓ Security and Defence
- ✓ Hotels and Leisure Properties
- ✓ Pharmaceutical and Biotechnology
- ✓ Education, Sport and Events

With the following services:

- ✓ Allocating local partnerships and project finance opportunities
- ✓ Joint-Venture arrangements
- ✓ Agency and Representation Agreements
- ✓ Advice regarding doing business under international sanctions
- ✓ Corporate set-up
- ✓ Immigration services
- ✓ Mergers & Acquisitions
- ✓ Commercial litigation and arbitration
- ✓ Real Estate development and acquisitions
- ✓ Construction and infrastructure projects
- ✓ Public procurement and tendering procedures
- ✓ Local and cross-border taxation
- ✓ Labour law
- ✓ Inheritance law and wills

For more information please contact:
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ANNEX 1. ARTICLES OF THE UAE LAWS ON FORCE MAJEURE

The GCC countries (except Saudi Arabia) and most Middle East countries have subscribed to the civil law system coming from Egypt which comes from the 1804 Napoleon Civil Code (France). The UAE Civil Law no. 5 of 1985 reads as follows.

Article 249 UAE Civil Law (similar provisions in other GCC/ME countries, i.e. Article 171 of Qatari Civil Law)

If exceptional events of a public nature which could not have been foreseen occur as a result of which the performance of the contractual obligation, even if not impossible, becomes onerous for the obligor so as to threaten him with grave loss, it shall be permissible for the judge, in accordance with the circumstances and after weighing up the interests⁴ of each party, to reduce the onerous obligation to a reasonable level if justice so requires, and any agreement to the contrary shall be void.

Article 273 UAE Civil Law (similar provisions in other GCC/ME countries, i.e. 187-188 of Qatari Civil Law)

(1) In contracts binding on both parties, if force majeure supervenes which makes the performance of the contract impossible, the corresponding obligation shall cease, and the contract shall be automatically cancelled.

(2) In the case of partial impossibility, that part of the contract which is impossible shall be extinguished, and the same shall apply to temporary impossibility in continuing contracts, and in those two cases it shall be permissible for the obligee to cancel the contract provided that the obligor is made aware.

Article 287 UAE Civil Law (similar provisions in other GCC/ME countries, i.e. Article 204 of Qatari Civil Law)

If a person proves that the harm arose out of an extraneous cause in which he played no part such as a natural disaster, sudden incident, force majeure, act of a third party, or act of the person suffering harm, he shall not be bound to make it good in the absence of a provision of the law or an agreement to the contrary.

Article 386 UAE Civil Law

If it is impossible for an obligor to give specific performance of an obligation, he shall be ordered to pay compensation for non-performance of his obligation, unless it is proved that the impossibility of performance arose out of an external cause in which he played no part. The same shall apply in the event that the obligor delays in the performance of his obligation.

Article 572 UAE Civil Law

If it is impossible to deliver the thing sold at the due time because it is no longer available through an unforeseen occurrence, the purchaser shall have the option either to wait until it is available or to cancel the sale.

Although these articles of the laws seem clear, we do not recommend to rely on them as such without considering their spirit and what they aim to protect or secure, which is a justice towards a truly affected party without harming the other party: all criteria (unforeseeability, beyond control or unsurmountable, and external) are scrutinized by a court to ensure the event making the performance impossible is actually a true source of „excuse“.