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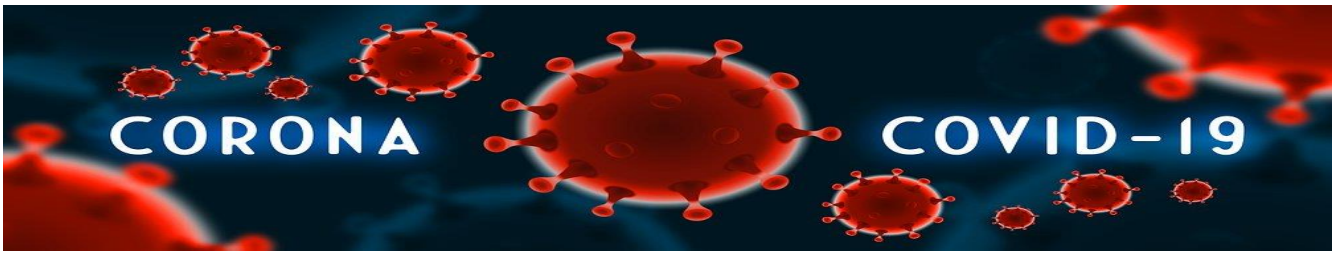
The COVD-19 Pandemic has affected various aspects of business world over. This is a compilation of frequently asked questions in relation to the legal implications of COVID-19 in Uganda in the areas of;

A. EMPLOYMENT
B. REAL ESTATE & CONSTRUCTION
C. CORPORATE
D. INSURANCE
E. COMPETITION
F. GENERAL QUERIES
G. DATA PROTECTION
H. LITIGATION
I. BANKING & FINANCE
J. TAX
K. CYBER SECURITY



A. EMPLOYMENT

1. Can an employer be legally compelled to notify the local health ministry, either proactively or in response to a request from the ministry or other government agency in case an employee is infected with the COVID-19 virus?

An employer is under a legal obligation, pursuant to Rule 3 (1) of The Public Health (Control of Covid-19) Rules, 2020 (issued on 25th March 2020) notify the local authority upon becoming aware that any employee is infected with an infectious disease. The local authority is in turn under an obligation to inform the Medical Officer of Health. This obligation was hitherto set out in Rule 3 (1) of The Public Health (Notifiable Diseases) Rules SI 281-21.

2. Is an employer legally obligated to notify employees if any of their employees is infected with the COVID-19 virus?

An employer is not legally obligated to notify employees if any of their employees is infected with the COVID-19 virus. The Public Health Act (PHA) however empowers the Minister of Health, in respect of an infectious disease to make rules setting out *inter alia* duties of employers in relation to the infectious disease. No rules have been made yet in relation to COVID-19.

The Occupation Health & Safety Act (OHSA) requires employers to provide employees with a safe working environment and also makes it an offence for employees to wilfully or recklessly do anything likely to endanger the safety or health of fellow employees. In practice, employers are advised to appropriately disclose that someone in the workplace has been exposed to COVID-19, without disclosing the identity of that employee in order to protect their privacy. The employer should also advise employees to self-quarantine in such event and seek medical advice if they have any symptoms of the virus.

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3. Is there an obligation to close a place of work if an employee is infected? At what stage can the employer reopen the place of work?

Yes, the Occupational Safety and Health Act, 2006 (the **OSHA**) imposes a duty on employers to ensure the safety, health and welfare at work for all persons working at the work place. The OSHA imposes a legal obligation on employers to take various measures to protect their employees from the spread of COVID-19 which would likely require closing so that the premises can be thoroughly disinfected.

4. Are there any issues with forcing employees to work from home?

Employment contracts often set out the places at which employees shall work and these are typically not limited to the official work place, and include any other place as the employee may be notified. Accordingly, an employer may require its employees to work from home. Even without such a provision, if the reason is to ensure the health and safety of the employees, an employer would have good grounds for requiring employees to work from home. The recommendation from Government for employees to work from home is clearly good reason in the current circumstances.

5. How can employers cut wages for employees? For example, can employees be asked to stay away from work in exchange for reduced pay without triggering redundancies?

The Employment Act expressly prohibits reduction in wages save with the consent of the employee.

6. Can an employer force employees to take outstanding leave days?

Under Uganda law, leave is taken at such times as may be agreed upon between the employer and the employee. The consent of the affected employees should therefore be sought before an employer can force its employees to take their outstanding leave days. The Industrial Court has however held that in exceptional circumstances, employers can without the employees' consent, send employees on forced leave. The COVID-19 pandemic would typically fall in such exceptional circumstances.

7. Can employers force employees to go on forced paid leave or unpaid leave during this time?

Under Uganda law, the consent of the affected employees should be sought before an employer can force its employees to go on forced paid leave or unpaid leave. The Industrial Court has held that in exceptional circumstances, employers can without the employees' consent, send employees on forced leave. The COVID-19 pandemic would typically fall in such exceptional circumstances the fundamental basis being everyone's safety.

8. Can the quarantine period be deducted from an employee's annual leave or sick leave? What if the period exceeds the employee's sick leave entitlement?

The quarantine period can be deducted from an employee's sick leave. Where the period exceeds the employee's sick leave entitlement, such period should be deducted from the employee's annual leave.

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9. Can terms of employment be renegotiated during this period of the pandemic?

Any term of employment such as working hours, remuneration and leave days entitlement can be renegotiated during this period provided the employer consults with the employees prior to making any amendments to their terms of employment, and the employee expressly agrees to the changes. An employer is required under Section 59 (4) of the Employment Act to issue a written notice of such changes to the employee.

10. Can employees be asked to reduce the number of hours they work so that they are paid based on the number of hours worked (salary is reduced accordingly)?

Yes, an employer may request the employees to reduce the number of hours they work so that they are paid based on the number of hours worked. However, an employer must consult with the employees prior to making any amendments to their working hours and to their salaries. The employees' consent must also be obtained before effecting such changes. Employers should document the consent of the employees.

11. What duty of care does an employer owe to their employees during this time? Accordingly, what liabilities arise on an employer if an employee is infected at the place of work?

The Occupational Safety and Health Act, 2006 (**OSHA**) imposes a legal obligation on employers to take various measures to ensure that the workplace is safe for all employees. Employers must therefore put in place measures to protect their employees from the spread of COVID-19 at the workplace. Contravention of any provision of this act is an offence for which the person charged would upon conviction be liable to a fine not exceeding Ugx 480,000 or imprisonment for a term not exceeding 12 months.

If an employee is infected at the place of work, an employer is liable under the Workers Compensation Act, Cap 225 to compensate the employee for work related infections/injuries. Infections/injuries resulting from deliberate and wilful misconduct of the employee are however excluded.

12. Do employers still need to pay full salaries to employees if the nature of their job is that they are unable to work remotely but need to stay home to be safe from the virus?

Yes, employers still need to pay full salaries to employees if the nature of their job is that they are unable to work remotely but need to stay at home to be safe from the virus.

13. Can employees who cannot work remotely be forced to take annual leave during this period?

Yes, employees who cannot work remotely can be forced to take annual leave during this period. However, the consent of the affected employees should be sought.

14. Can employers make employees redundant merely due to the fact that a pandemic exists?

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Employers may terminate employees' employment contracts on account of redundancy (due to economic reasons) provided that they believe that it is for a reasonable cause and that they are able to demonstrate that there is a valid justification for the proposed redundancy.

15. What is the legal position on sick leave? Is it 30 days or 7 days with full pay and 7 days with half pay?

The Employment Act provides that an employee who has completed not less than one month's continuous service who is incapable of work because of sickness is entitled to sick pay, i.e., full wages and every other benefit for self and family for the first month. An employer can terminate an employee on this basis only after the third consecutive month of absence from work.

16. What is an employee entitled to when they are working remotely? What are the benefits an employee is entitled to when working remotely?

Employees are entitled to their usual employment benefits as stipulated under their employment contracts (such as salaries and leave entitlements etc.) when they are working remotely. They would not, however, be entitled to benefits that require that they are physically present at the workplace (such as transport to the office benefits, free lunch etc.)

17. Should an employer have a written COVID-19 policy?

Yes, it is recommended for employers to have a written COVID-19 policy as a measure to help protect workers from infection and protect employers from liability.

18. Would directors and officers be held liable for not doing enough if someone caught the virus and spread to other staff members?

Yes, directors and officers may be held liable under the Occupational Safety and Health Act, 2006 (**OSHA**) for not doing enough if someone caught the virus and spread to other staff members.

19. Can an employer make an employee perform other jobs when their core functions are down (for examples, if sales are down)?

Yes, an employer may make an employee perform other jobs when their core functions are down. However, an employer must obtain the consent of the employee prior to making any amendments to their duties and responsibilities.

20. What should an employer do if an employee doesn't want to come at work because he/she is afraid of being infected at the workplace?

Employees are not allowed to be away from the workplace without authorization or good cause. Where the employee has no reasonable basis for the fear, any absence could be deducted from their leave days or be construed as abscondment.

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B. REAL ESTATE & CONSTRUCTION

1. What are the obligations of landlords and tenants in relation to minimising the spread of the COVID-19 virus at the building or the leased premises?

Every owner or occupier of land who becomes aware that any person residing on his or her premises is suffering from a notifiable disease is required under the Public Health (Notifiable Diseases) Rules SI 281-21 to notify the local authority who shall in turn notify the medical officer of health. COVID-19 was designated as a notifiable disease under the **Public Health (Notification of COVID-19) Order 2020** released on 25 March 2020 and passed by the Minister under the Public Health Act, Chapter 281 of the Laws of Uganda ("**PHSA**").

Some of the measures taken in relation to the COVID-19 virus include the provision of hand sanitisation and social distancing. Ordinarily, the tenant would be responsible for the leased premises while the landlord would be responsible for the common areas of the building (which would be paid for using part of the service charge paid by all the tenants occupying the building).

2. Can the Government order the closure of the whole or a part of a building?

Under the PHSA and the Public Health (Notifiable Diseases) Rules, the Minister may enforce precautionary measures by statutory instrument ordering the evacuation of the whole or any part of an infected area in respect to a notifiable disease which is infectious.

As at 26 March 2020, we are not aware of any such rules having been made in relation to COVID-19 in respect to closure of buildings.

3. Can a landlord unilaterally decide to close the whole or a part of a building to help stop the spread of the COVID-19 virus?

Subject to the express provisions of the lease and in the absence of a Government directive under the PHSA, if a landlord unilaterally decided to close the entire or a part of the building that affects the ability of the tenant to use the leased premises, the landlord could potentially be liable for the breach of the landlord's obligation to allow the tenant quiet and peaceful possession of the leased premises. In such instances the tenant would be entitled to exercise the remedies provided under the lease and under the law.

Any such closure to the extent that it affects the tenant's use of the leased premises should ideally be done in consultation with and with the agreement of the tenant.

4. Can a tenant unilaterally decide to shut its premises to help stop the spread of the COVID-19 virus

Whether a tenant can close its premises for business in the absence of the Government directive under the Public Health Act or suspend payment of sums due under a lease will depend on the provisions of the lease.

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In some leases, the tenant may be entitled to stop trading and close the leased premises so long as the tenant continues to pay rent. In leases, particularly for malls, that have "no ceasing of trade" and “minimum operation hours,” which are intended to maintain synergies across various parts of the malls, a unilateral closure of the leased premises by the tenant could potentially be in breach of these provisions and entitle the landlord to remedies under the lease and in law.

5. What is the effect on co-tenancy clauses where the Government directs the closure of the whole or part of a building or where the other tenants in the building unilaterally decide to close their leased premises and cease trade?

Co-tenancy clauses are provisions in a lease that require the landlord to maintain a minimum building occupancy. The effect on the co-tenancy clause would depend on:

a) What is construed as occupancy;
b) Whether the minimum occupancy is affected by a partial closure;
c) Whether force majeure or the doctrine of frustration could be applied to the scenario at hand.

6. Can a tenant suspend the payment of rent claiming that the Covid-19 gives rise to a force majeure event?

In order to claim force majeure, force majeure must be specifically provided for in the lease. Force majeure cannot be implied in a contract under Ugandan law. The ability to claim that COVID-19 is a force majeure event would depend on the wording of the force majeure clause and the period of suspension of rent and the closure of the leased premises would depend on what the lease provides should happen in a force majeure event.

The effect of a force majeure event on the lease depends on what the parties provided in the lease. The lease may provide for suspension, or termination, or termination after an agreed period of suspension.

Where the lease is silent on force majeure, neither party to the lease can claim it.

7. What happens if there is failure to provide building services, including maintenance, cleaning, sanitation, and security due to COVID-19?

Responsibility for the provision of services for a multi-tenant building, including maintenance, cleaning, sanitation and security for the common areas are normally set out in the lease.

It is common market practice in Uganda for landlords to exclude liability for failure to provide services where the cessation of the services is due to factors out of the control of the landlord or due to no fault on the part of the landlord. This is recognised on the basis that the landlord is not personally providing the services and that the landlord has no direct control over the third party service vendors.

Practically, however, the landlord would take all reasonable steps necessary to restore the relevant services to the extent practicable as it is not in the best interest of the landlord to let its entire building

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deteriorate. This is because the landlord's interest in the entire building is much greater than any one individual tenant's interest in a portion of the building.

8. If an individual tenant or an employee of the tenant contracts COVID-19, can a landlord prohibit the tenant or its employee from accessing the building/premises?

Under the PHSA a landlord may be held liable for knowingly letting a dwelling or premises in which any person that has been suffering an infectious disease has occupied without having it disinfected to the satisfaction of the medical officer of health. A landlord may therefore seek to avoid liability by ensuring infected persons are not given access to a building to avoid the risk of contamination of the building/premises.

9. What alternative remedies can I consider if my contract/lease does not entitle me to suspend my obligations on account of force majeure?

The doctrine of frustration under common law may be applied where the performance of a contract is rendered impossible due to the occurrence of events beyond the control of the parties to the contract, including acts done by persons not party.

The doctrine of frustration however places the onus of proving frustration on the party claiming it. The party claiming frustration would need to prove that:

a) the frustrating circumstances arose without fault of either party;
b) the event causing the frustration was unforeseeable; and
c) the intervening event resulted in something so radically different from that originally contemplated by the parties.

For a contract to have been frustrated, the event in question must be fundamental to the terms of the contract, and do more than simply make it less convenient or more expensive to perform the contract.

It should, however, be noted that frustration if proved leads to an automatic termination of the contract/lease and not a suspension of the obligations as may be possible under force majeure. This may not be the intended or desired result for both parties. In this regard, parties may opt to vary the terms of the contract/lease to accommodate the party affected by the frustrating event.

10. What should real estate developers with development loans do in view of the looming slowdown in house purchase uptake?

The Bank of Uganda on 20 March 2020 issued Measures to mitigate the economic impact of COVID-19 to mitigate the adverse effects on borrowers from the Covid-19 pandemic including a waiver on limitations on restructuring. The developers should (if required) contact their respective banks to assess the current situation and how it has impacted their business and to discuss how to restructure repayment of their loan.

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11. How are payments under the sale agreement affected if the completion date falls during a period when the lands registries may be closed?

This will vary from one agreement to another depending on the specific terms of the agreement:

a) For a cash transaction, a purchaser's obligation to pay the balance of the purchase price is normally pegged to the completion date in exchange for the release of the completion documents. In some circumstances, parties agree that the entire purchase price or a portion of it can be released to the vendor on the completion date upon release of the completion documents to the purchaser. However, it is market practice for the deposit and the balance to be held in escrow pending the registration of the transfer.

b) In a financed transaction, the purchaser normally pays the deposit into escrow and on the completion date procures a financial undertaking from its financier to make payment of the balance of the purchase price to the vendor on the registration of the transfer in favour of the purchaser and the charge in favour of the purchaser's financier. The vendor would not be entitled to the entire purchase price until the transfer and the charge have been registered.

The closure of the lands registries in both instances has the effect of delaying the stamping and registration of the transfer and the charge (if applicable) and consequently the receipt by the vendor of the purchase price and the granting of possession of the property to the purchaser. Both the vendor and the purchaser should have a discussion on how best to manage each party's expectations and timelines for completing the transaction as the closure and the reopening of the lands registries is not in the control of either party.

The provisions of the agreement for sale on time prescribed for registering the transfer should also be reviewed so as to provide for additional time if required.

12. How would the closure of the lands registries and various governmental offices affect completion in various sale and purchase transactions?

The following issues should be considered when bearing in mind completion for a property sale transaction:

a) in a financed transaction, the completion period should give sufficient time for the bank to complete its due diligence (if this has not already been done) once the lands registries reopen;

b) the completion period should also give sufficient time for the vendor to procure the various completion documents, including the rent clearance certificate, consent to transfer, rates clearance certificates once the lands registries and relevant authorities, including the county government offices, reopen;

c) whether any of the completion documents (including rates clearance certificates) that may have already been procured would expire prior to the re-opening of the lands registries; and

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d) time prescribed for registering the transfer

If the agreement for sale has already been executed and the completion date would likely occur prior to the reopening of the lands registries and the relevant county government offices, then parties will need to discuss providing an extension of time to a more realistic date so as to allow each party to comply with its completion obligations.

Presently, the land registries have been guided to reduce to skeletal staff and this is impacting the turnaround time for transactions but they are still capable of being completed.

13. How would closure of registries affect the handover of possession of the property on a sale transaction?

It is market practice for possession of the property to be granted by the vendor to the purchaser on completion of the registration of the transfer and release of the purchase price to the vendor.

As mentioned above, the closure of the lands registries has the impact of delaying the stamping and registration formalities on the transfer and consequently the release of purchase price to the vendor and grant of possession of the property to the purchaser.

Should the purchaser wish to take possession of the property prior to the registration of the transfer then this may be made conditional on the release of the purchase price and the purchaser would take the risk on the registration of the transfer.

Alternatively, the purchaser may occupy the property prior to the registration of the transfer as a tenant and pay rent to the vendor. In this situation, while the vendor enjoys an additional revenue stream (for what is hoped to be a short period), the vendor takes on the risk of vacating the purchaser if the transaction is not completed due to no fault on the part of the vendor.

Presently, the land registries have been guided to reduce to skeletal staff and this is impacting the turnaround time for transactions but they are still capable of being completed.

14. What steps if any is the Ministry of Lands taking to help with the registration of documents that may have statutory or contractual timelines?

The Ministry of Lands issued a notice on 18 March 2020 requiring all land registry applications to be handed in at the designated front desk and acknowledgment obtained. Notification of progress would be by telephone contact.

15. Is COVID-19 covered by business interruption insurance and what is the threshold for recovery?

The closure of a commercial building/mall by the Government pursuant to a public health/quarantine order may trigger an insurance claim.

However, this would be subject to the terms of the individual insurance policy and one would need to review their insurance policy and check with their insurers or insurance brokers on whether the

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insurance policy includes losses caused by pandemics or closure of businesses due to a public health quarantine order.

Landlords and tenants may need to review their business interruption cover to confirm that it will allow them to recover losses (including loss of rent and profit) suffered due to buildings/commercial centres/malls being closed.

C. CORPORATE

1. Is the COVID- 19 pandemic an event which is a force majeure or is it an Act of God?

The COVID-19 pandemic is a force majeure (as long as the provisions on force majeure in the relevant contract cater for it). An Act of God is an occurrence exclusively arising as a result of natural causes of so extraordinary a nature that it could not reasonably have been foreseen.

2. What if my contract does not have a force majeure clause?

A party to contract can only be able to rely on a force majeure clause, if the force majeure clause was included in the contract. In the absence of a force majeure clause in the contract a party to the contract cannot rely on a force majeure but may be able to rely on the doctrine of frustration as discussed in Q.8 below.

3. Can a contract be set aside if a party cannot deliver goods or services on time because of the pandemic?

According to section 66 of the Contracts Act, 2010, where a contract becomes impossible to perform, the parties to the contract shall be discharged from the further performance of the contract. In this instance, if a party cannot deliver goods or services on time because of the pandemic, the contract can be set aside.

4. Can a party suspend its non-monetary obligations under a contract in light of COVID-19?

A party can only suspend its obligations under the following circumstances:

a) Under the doctrine of "**force majeure**", but only if this is included in the written contract and the provisions on force majeure are wide enough to cover COVID-19. For instance, a mere reference to "force majeure" or "acts of God" in the contract may be insufficient to cover COVID-19.

b) If there are other specific clauses in a contract that are wide enough to cover COVID-19 and which allow the party to suspend its obligations or by relying on provisions of the law that may allow a party to suspend performance of its obligations.

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c) In addition, a party can rely on the doctrine of frustration (*discussed below*), as provided under the Contracts Act, 2010. If relied upon successfully, this excuses a party from its obligations, the effect of which is to terminate a contract rather than to suspend the same.

5. Can a party suspend its monetary obligations under a contract in light of COVID-19?

A party would need to rely on the circumstances mentioned in Q.1 above in order to suspend its obligations under a contract.

To rely on a force majeure event, the event must prevent or make practically impossible the specific obligation. Since the funds transfer system remains operational, it is generally difficult to rely on force majeure provisions to suspend payment obligations. Parties should therefore consider the wording of the force majeure clause to confirm if the clause exempts obligations relating to payment of money.

In addition, the party should also consider if the provision exempts any unpaid financial obligations incurred prior to the event being relied on. For instance, if the clause only relates to obligations arising on or after the relevant force majeure event, the clause cannot be relied upon to avoid unfulfilled obligations that arose prior to COVID-19.

Lastly, the party should check if the force majeure clause covers both parties or one party as this will help establish which obligations are covered.

6. In what circumstances can a party rely on force majeure in order to suspend its obligations under a contract? What conditions need to be fulfilled?

A force majeure clause will typically excuse a party from performance of a contract following the occurrence of certain events beyond that party's control.

For force majeure to be relied on, it needs to be specifically included in the contract and properly defined to cover the relevant circumstances or events. Typically, force majeure is usually defined as acts, events or circumstances beyond the reasonable control of the party concerned. Consequently, whether a party can suspend its obligations will be determined on the precise terms and specific context.

The consequence of successfully establishing a claim under force majeure clause is not an automatic right to suspend performance of contractual obligations. A party should check the remedy available in the specific contract. Generally, the remedies would include:

a) extension of time to perform those obligations;

b) suspension of contractual performance for the duration of the force majeure event; and/or

c) suspension of contractual performance for the duration set out in the contract after which the parties can terminate the agreement.

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A party should only make a force majeure claim with care, because a wrongful claim could have serious consequences, including amounting to a breach of contract or a repudiation of the contract. In such circumstances, the other party may be entitled to claim damages or to terminate the contract.

Conditions to be fulfilled for a successful force majeure claim

Once a party has established that COVID-19 would qualify as a force majeure event, the party must also consider the following criteria before suspending their obligations:

a) Whether the affected party's ability to perform its obligations under the contract has been prevented, impeded or hindered by COVID-19

It is likely that a party will be able to prove its inability to perform its obligations due to COVID-19 for reasons such as the need for mandatory quarantine, isolation of an office or business premises or closure of an office or business premises due to the outbreak. A force majeure clause that provides that a party must be "prevented" from performance will be more difficult to prove than one that provides that a party would be "hindered" from performance.

b) Whether the affected party has taken all reasonable steps to seek to avoid or mitigate the event or its consequences

A party is obligated to take steps to find an alternative means before claiming force majeure. However, given the continued global impact of COVID-19 it is likely that many parties will not be in a position to find alternatives to fulfil their obligations.

c) Whether there are any specific obligations under the force majeure like a notice requirement

It is important to check if the party is obligated to serve the other party with a notice and what the notice requirements are before suspending their performance. The party should comply with any set timelines and other requirements of issuing the notices as some contracts have specific time-bar clauses.

7. Would COVID-19 constitute force majeure? What are the thresholds for force majeure?

The first issue to consider is whether a pandemic, disaster, catastrophe or emergency situation akin to COVID-19 is covered by the definition of force majeure in the relevant contract. Therefore, one has to closely consider what definition was provided in a contract on a case by case basis.

A specific reference to a "pandemic" will make it easier to bring a force majeure claim. However, if the clause does not use specific language to cover pandemics, the party will need to consider if COVID-19 can be sufficiently brought under a different concept like an "act of God" or whether subsequent social distancing or lock-down requirements of governments amount to "action by government," or whether it is captured under a catch-all provision in the contract. Voluntary actions by a party, say to protect the health and safety of employees in the absence of government requirement, may be more problematic.

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Additionally, it is important to note that the relevant force majeure event need not be COVID-19 itself. It is the consequences of COVID-19 and its impact upon the ability of the affected party to fulfil its contractual obligations that will be relevant.

8. In what circumstances can a party rely on the principle of frustration of a contract with respect to COVID-19 and if so on what basis?

Where the contract does not have a force majeure clause, a party may rely on discharge by frustration under the Contracts Act or under the common law principle of frustration.

According to section 66 of the Contracts Act, 2010 where a contract becomes impossible to perform or it is frustrated and the party cannot show that the other party assumed the risk of impossibility, the parties to the contract are discharged from the further performance of the contract.

Under common law, the principle of frustration is a legal concept that does need to be specifically set out in the contract in order for a party to rely on it.

The rule was developed in the case of ***Taylor v Caldwell 1863 3 B&S 826***, where the defendants had agreed to permit the plaintiffs to use a music hall to hold concerts on four (4) specific nights. After the contract was entered into but before the first performance night, the hall was destroyed by fire. The court held that the defendants were not liable in damages, since the doctrine of sanctity of contracts applied only to a promise which was positive and absolute, and not subject to any condition express or implied. The court held that *"the principle seems to us to be that, in contracts in which the performance depends on the continued existence of a given person or thing, a condition is implied that the impossibility of performance arising from the perishing of the person or thing shall excuse the performance."*

What is the test applied today in determining frustration of contracts?

Over time, the courts have applied slightly differing tests to that stated in ***Taylor v Caldwell***, and rather than seek to identify a single, definitive test for where the doctrine of frustration can be applied in all cases, more recent authority supports a broader approach. This approach takes into account all of the facts and circumstances of the case when deciding whether a contract has been frustrated. Therefore, a frustrating event is an event which:

a) occurs after the contract has been entered into;
b) is so fundamental as to be regarded by the law both as striking at the root of the contract and as entirely beyond what was contemplated by the parties when they entered the contract;
c) is not due to the fault of either party; or
d) renders further performance impossible, illegal or makes it radically different from that contemplated by the parties at the time of the contract.

What will the party relying on the doctrine of frustration need to prove?

The party relying on the doctrine of frustration will need to prove that:

a) the underlying event is not the fault of any party to the contract;

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b) the event or circumstance occurs after the formation of the contract and was not foreseen by the parties; and
c) it becomes physically or commercially impossible to fulfil the contract, or transforms the obligation to perform into a radically different obligation from that undertaken initially.

It is however important to note that the threshold for proving frustration based on COVID-19 is higher than if a party was relying on a specific force majeure clause.

9. If a counterparty to a contract refuses to meet its obligations under the contract because of COVID-19, what recourse does the other party have?

In such a case, the disgruntled party can sue the other party for breach of contract and claim damages or specific performance (depending on the nature of the contract), or exercise any other remedies available under the contract or under law.

10. With respect to registration of documents under the Companies Act:
(i) What happens to the requirement to register documents under the Companies Registry (where the registries are closed);
(ii) Are penalties applicable for late payment of stamp duty during the period of COVID-19 and can one get a waiver of penalties under the Stamp Duty Act?

The Companies Act, 2012, sets out specific timelines for registration of various documents such as forms to effect changes in share capital or shareholding, changes in directors, charges, debentures among other documents. The non-compliance with the statutory timelines attracts certain penalties under the Companies Act.

Considering that the closure of the Companies Registry will affect different sectors, we anticipate that the Government or Companies Registry may issue a guideline on the next steps to be taken Yes, there are penalties for failure to stamp documents with the requisite stamp duty within forty five (45) days from the date of the relevant agreement or document being executed in Uganda, or thirty (30) days from the date of delivery into Uganda of the relevant agreement or document which is wholly executed outside Uganda. Failure to pay stamp duty is an offence and accrues a fine not exceeding UGX. 2,000,000 or imprisonment not exceeding six months or both.

The Stamp Duty Act is silent on whether the Uganda Revenue Authority (URA) has discretion to waive penalties on late payment of duty. In practice, however, the URA rarely enforces the payment of penalties on late payment of stamp duty. The URA has discretion to extend time within which the stamp duty payable/assessed should be paid depending on the circumstances of each case. Parties may therefore apply to the URA for an extension of time within which to stamp documents as a result of COVID-19.

11. If one has entered into a commercial contract (e.g. a Share Purchase Agreement) that is pending completion, would the outbreak of COVID-19 be deemed to constitute a material adverse change (MAC) entitling a party to terminate the agreement/ delay completion? What other recourse would you have?

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A MAC clause is a provision in a contract that allows a party to either rescind a contract or vary the contractual terms if there is a material adverse change in the business or prospects of the relevant asset in question (be it shares in a company, property or even entry into of a joint venture). Rarely does the MAC clearly and specifically define the events that constitute a MAC or the amount of loss of value of a target business that would constitute a MAC. In the event of a dispute as to whether a MAC has arisen, the courts have to conduct an inquiry based on the facts of the event in question to determine if that event constitutes a MAC.

In order to rely on a MAC, this must be specifically included in the underlying contract.

COVID-19 has been declared a pandemic by the World Health Organization. Many businesses have been adversely affected by the pandemic due to reasons such as lock downs and business supply disruptions and are experiencing or are anticipating financial downturns due to COVID-19. Despite the foregoing, the effects of the pandemic on the earning potential of businesses and industries in the long term is unknown. It is unknown how long the pandemic will last and its long term effect on the global economy. The ability of a party to successfully claim that COVID-19 constitutes a MAC will need to be assessed on a case-by-case basis taking into account the individual circumstances of the particular matter and the effect that COVID-19 will have had on their business, assets or operations.

In the event that a party was aware of the COVID-19 outbreak when entering into the relevant contract, it would be even more difficult for such a party to rely on the MAC clause.

12. What are the effects of COVID-19 on delays to obtain regulatory approvals that are condition precedent (CP) to completion?

It should be noted that as result of COVID-19 and the various directives that have been issued by the Government in response to COVID-19, a lot of the Government offices (including regulators offices) are partially closed and a lot of the normal services are unavailable at this time. This is likely to result in delays in procuring regulatory approvals required in order to consummate transactions.

Please refer to our response to Q.1 above. A party could rely on force majeure, frustration or the other circumstances mentioned in Q.1 above in order to suspend its obligations under a contract or to terminate the contract or to extend the timeline for completion (if this right exists under the contract).

The parties to the contract could also mutually agree in writing to delay completion of the transaction and extend the timelines for the fulfilment of the CPs awaiting further developments on the measures that government will take to contain COVID-19.

13. For purposes of interpreting a *force majeure* clause that includes an "epidemic" as an event, can it be argued that there is currently an "epidemic" in Uganda?

Force majeure clauses are generally interpreted narrowly according to the provisions of the contract; that is, only the events listed and events similar to those listed.

If the force majeure clause includes an "epidemic" as an event, it can be argued that this includes a "pandemic" because a pandemic event is an epidemic that has spread throughout the country or

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continent. In this regard, COVID-19 can be regarded as an "epidemic" in Uganda in relation to interpreting a force majeure clause.

D. INSURANCE

1. Is business interruption covered in insurance policies in Uganda?

Business interruption cover is a form of insurance coverage typically procured by businesses as an addition to property damage coverage or under the industrial all risks product. It is not typically a standalone product. Business interruption cover is designed to assist policyholders to mitigate the loss of revenue or income due to their operations being affected by the designated cause, e.g. the occurrence of property damage by fire or other casualty.

In our experience, the prevalent form of business interruption cover taken by businesses in the Ugandan market is that included as an addition to a property damage coverage such as fire and industrial all risks like machine breakdown. There are also instances where specialised forms of business interruption cover are taken in certain industries as stand-alone covers.

2. Would the cover extend to interruption caused by the COVID-19 pandemic?

Business interruption cover does not typically include pandemics like COVID-19. These are categorically excluded under the exclusion clauses of the policy. Business owners considering COVID-19 related insurance claims must review the specific exclusions in their insurance policies to confirm coverage.

a) **Designated Peril:** Property damage policies typically require a designated peril or cause of loss (for example a fire or earthquake) in order for the insurance cover to respond. If the business interruption cover forms part of such a policy and the cause of the loss does not qualify as one of the designated perils, then coverage for business interruption will not apply.

b) **Direct physical loss:** Property damage policies also typically require direct physical loss to the property as well as proof of causation. Generally, direct physical loss would not include consequential or resulting economic losses to the business.

c) **COVID-19 related claims**: In the event of a claim for coronavirus-related business interruption, questions may arise as to whether the designated peril and direct physical loss requirements have been met.

   For example, in circumstances where business premises or manufacturing facilities have been closed as part of a mandatory governmental order or voluntarily closed by the business owner as part of COVID-19 containment measures or out of fear of contamination, but the physical facilities are otherwise still habitable and uncontaminated, it is possible that a generic business interruption cover will not respond since there has been no property damage/no direct physical loss.

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By contrast, if the premises have become physically contaminated and uninhabitable due to coronavirus, there may be a basis for a policyholder to claim that a direct physical loss has occurred. In order for a claim to be successful, however, COVID-19 has to be included among the insurable risks that the business extension policy can cover.

d) **Bespoke business interruption coverage:** While generic policies may not cover economic losses arising from the suspension or closure of operations due to COVID-19 control measures, bespoke insurance policies may respond to such losses. For instance, bespoke business interruption policies may be customized so as to respond to cover reduction of gross profit lost as a result of operational shutdowns and other business interruption arising from communicable or infectious disease outbreaks. Such policies would respond even where there has been no physical loss or damage to property. Policies such as these are, however, not common place in Uganda.

3. What should businesses do/consider in relation to their insurance policies in light of the COVID-19 pandemic?

Businesses should do the following:

a) Carefully review along with their insurance broker the terms of their existing coverage to establish whether business interruption relating to COVID-19 or epidemics generally would be covered or excluded from cover and whether, even if there may be no exclusion from cover, whether proof of physical loss may affect the ability to recover from insurance;

b) Once a business has established the extent of cover under business interruption, then the business must take such steps to minimize risk and exposure to the pandemic as much as possible for instanced through restructurings, and also manage the costs or mitigate losses in view of the exposure to the pandemic.

c) Going forward, businesses should avoid generic policies and carefully think through the practical risks and losses they are likely to face in an environment where such epidemics and disease outbreaks are no longer 'black swan' events and structure their insurance coverage so as to effectively respond to these risks;

d) Insurers, insureds and brokers should work together to evaluate whether the present industry standard forms of property damage and business interruption cover are 'fit for purpose' and to consider developing products that address the practical risks that businesses are facing at present and are likely to face in the future;

e) For instance, consideration could be given to cover endorsements that extend cover to a contingent business interruption, that is, cover is extended to a business where its key suppliers (rather than the business itself) suffer physical losses to their property that impairs the supplier's ability to deliver contracted goods or materials;

f) Consideration could also be given to extension of cover to situations where although there has been no physical damage, governmental action such as a lockdown orders as part of epidemic containment measures, affects access to or use of the insured's business premises.

4. How should businesses respond to supply chain disruption?

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Businesses should do the following:

a) Review their policies (with particular focus on exclusions), together with their insurance brokers to ascertain whether their key suppliers are included in their insurance cover. In the event that they are not included, they should renegotiate these policies to have them included, going forward; and

b) Liaise with their existing suppliers to mitigate loses for instance by renegotiating more favourable terms or make claims with their respective insurers to indemnify their losses, where applicable.

5. In the case of Insurance Premium Financing Arrangements, if the client does not meet his monthly payments, would the insurers be called upon to cancel the policies and refund the premium due?

Yes, the Insurance Act 2017 requires insurers to cancel policies where the premium is not paid within 60 (sixty) days of falling due.

Insurance Premium Financing Agreements will typically include:

(a) a right for the bank to procure the cancellation of the policy if the insured/borrower defaults in repayment of the premium financing facility; and

(b) an acknowledgement by the insurance company that if the bank procures the termination of the policy as above, then the insurer would refund to the bank a pro rata portion of the unutilized premium.

E. COMPETITION

1. What happens to mergers being evaluated by the Competition Authority of Uganda (the CAU) in the event of a lock down/ closure of the CAU?

Uganda has no local competition/antitrust legislation except for sector specific anti competition laws for instance in telecommunications, financial services, insurance and energy sectors. Uganda is however bound by the COMESA (Common Market for East and Southern Africa) Regulations, which were localized under the COMESA Treaty (Implementation) Act 2017. This treaty gives the COMESA Regulations the force of law in Uganda and accordingly requires the reporting of certain transactions to the COMESA Competition Commission.

In light of the above, Uganda does not have a competition authority.

2. How will merger applications be submitted to the CAU in the event of a lock down/ closure of the CAU?

This is not applicable because Uganda does not have a competition authority.

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3. What kind of conduct is business is prohibited and is likely to attract investigations or imposition of sanctions by the CAU during this period of COVID-19?

Uganda has no competition/antitrust legislation except for sector specific anti competition laws for instance in telecommunications, financial services, insurance and energy sectors, which are discussed below and would be investigated irrespective of the COVID-19 circumstances.

a) **Telecommunications:** Licensees providing communication services under the Communications Act 2013 (an "operator") are not to engage in any activities, whether by act or omission, which have, or are intended to or likely to have, the effect of unfairly preventing, restricting or distorting competition in relation to any business activity relating to communication services, including effecting anti-competitive changes in the market structure and, in particular, anti-competitive mergers and acquisitions in the communications sector.

b) **Financial Institutions:** Under the Financial Institutions Act 2004, a notice of no objection of the Bank of Uganda is required for the allotment, issue transfer or registration of transfer of 5% of the shares of a financial institution, or the acquisition of control of a financial institution.

c) **Insurance:** The Insurance Act 2017 precludes a person from becoming a significant owner of a licensee without the prior written approval of the Insurance Regulatory Authority (IRA). Similarly, a person who is a significant owner of a licensee shall not, except with the prior written approval of the IRA, significantly increase or reduce their control over the licensee or cease to be a substantial shareholder of the licensee. A “significant owner” is defined to mean a person who exercises control over a licensed insurance company.

d) **Energy:** Licensees under the Electricity Act 1999 are restricted from transferring their license without the written consent of the Electricity Regulatory Authority. “Transfer of license” under this act includes the acquisition of control by the license holder while “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management of that person, whether through the ownership of shares, voting, securities, partnership or other ownership interests, agreements or otherwise.

4. Will coordinated or even unilateral efforts by entities to mitigate and suppress the COVID-19 pandemic prompt competition law scrutiny?

e.g. information sharing of competition sensitive information such as future prices, volume of stock available, co-operation in delivery of supplies to remote areas if shops are closed down etc.

This is not likely to happen at a national level considering that Uganda does not have a competition authority. However, from a sector specific perspective, the regulator of the telecommunications in Uganda could scrutinize activities by operators to ensure they are not engaging in anti-competitive behaviour in breach of, the Uganda Communications (Competition) Regulations, 2019. These regulations state that an operator, consumer or authorised person shall be taken to have engaged or to be engaged in anti-competitive act, if, by commission or omission, that act has an appreciable effect on fair competition in the communications market.

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5. **Can undertakings unilaterally refuse to deal with a firm that fails to adopt adequate measures to protect workers and customers, or a firm that promotes misinformation that may exacerbate the public health risks?**

This is not likely to happen at a national level considering that Uganda does not have a competition authority. However, from a sector specific perspective, the regulator of the telecommunications in Uganda could scrutinize activities by operators to ensure they are not engaging in anti-competitive behaviour in breach of, the Uganda Communications (Competition) Regulations, 2019. These regulations state that an operator, consumer or authorized person shall be taken to have engaged or to be engaged in anti-competitive act, if, by commission or omission, that act has an appreciable effect on fair competition in the communications market.

6. **Would hoarding of products with the subsequent intention of increasing prices and/or collusive increase of prices in light of increased demand (commonly known as price gouging) during the COVID-19 crisis be permissible?**

Hoarding products and hiking prices is not expressly prohibited by any form of legislation. The President has, however, firmly spoken out against increasing food and essential commodity prices during the COVID-19 pandemic. It will not be unusual that a government directive addressing the rampant price increase is issued to cater for stability during the COVID-19 pandemic.

7. **Will the CAU hold meetings and carry out site visits during this period?**

No. Uganda does not have a competition authority.

8. **How does COVID-19 impact investigations where the CAU requires responses to queries to be provided within a certain period?**

Uganda does not have a competition authority. However, to the extent that the telecommunications regulator wishes to conduct investigations, responses would be affected by delays as a result of the protective measures currently in place and/or being developed by the government that ultimately have an impact on movement of persons.

F. GENERAL QUERIES

1. **What is the extent of the President's powers to declare a State of Emergency in Uganda and what this means?**

Under Article 110 of the Constitution of Uganda, 1995 the President is empowered to declare a State of Emergency where the President is satisfied that circumstances exist that are a threat to the security or the economic life of the country or that part is threatened by internal insurgency or natural disaster. Furthermore, the Emergency Powers Act (Cap 297 Laws of Uganda) provides for passing of regulations by the Minister, which may be expedient for inter alia securing the public safety and for maintaining supplies and services necessary to the life of the community.

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2. Will I have to refund registration fees for conferences that are postponed rather than cancelled?

This will be heavily dependent on the terms and conditions agreed to when the payment for the conferences was made. Typically, in a scenario for postponement, there is no refund of fees as the opportunity to attend is still available. Where there is cancellation, most terms and conditions do not provide for refund of fees.

3. What does the gatherings prohibition mean for companies and shareholder meetings?

The prohibition on public gatherings means that companies, particularly public listed companies, will not be able to convene physical annual general meetings (AGM) during this period when the spread of COVID 19 is being controlled. As such, companies will need to postpone such general meetings or explore alternative ways of convening the meeting.

Alternative ways of convening an AGM could be considered (for example, video-conferencing or telephone conferencing). However, these alternatives would need to take into account whether the articles of association of the company allow for such alternatives and whether the number of shareholders who could attend can meaningfully participate in the meeting.

In addition to the above, and in so far as the Companies Act and the articles of association of a company allows, resolutions by a company which would have been passed at a general meeting could be passed by way of written resolutions. This can generally be used for other types of companies other than public companies (for example, private companies) as there is no mandatory requirement in the Companies Act to convene AGMs for these companies. To ensure that the articles of association of a company allow for this, an analysis would need to be done on a case by case basis to determine whether this option is a possibility.

While appreciating that controlling the spread of COVID 19 is critical, companies should comply with their continuing obligations (for example, the requirement for public companies to hold an annual general meeting within 6 months after their accounting reference date) in so far as it is practicable. In the event that compliance is inhibited by the restrictions that are in place, this reason can be used as a justification for non-compliance. Whilst the Registrar of Companies has not published any statement on the issue of holding meetings and impact on on-going requirements for companies, we do not foresee the Registrar of Companies seeking to impose penalties under the Companies Act for non-compliance arising from the restrictions on public gatherings due to COVID 19.

4. What are the legal implications on booking repayments?

Booking repayments will be guided by the terms and conditions on which the booking was done. Where a repayment is made, the consideration for the item that will have been booked will be extinguished and as such the performance of the agreement may be avoided. This will however need to be reviewed on a case by case together with the terms of the agreement and terms of repayment.

5. Can a customer who looks sick be refused entry?

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There is no express provision in the law on which a person that looks sick may be refused entry. However, in light of the designation of COVID-19 as a notifiable disease, one may refuse entry but will likely be better protected if they additionally notify the local authority of the suspected case of an infectious disease under the PHSA.

G. DATA PROTECTION

1. Do companies need to consider privacy and security laws when collecting data from employees as part of an effort to monitor and prevent the spread of COVID-19?

Many of the steps to monitor and prevent the spread of the 2019 novel coronavirus disease (COVID-19) pandemic (COVID-19) will involve the processing of "personal data" (such as a data subject's name) and "special personal data" (which would include the health status of a data subject) and therefore companies will need to consider privacy and data protection laws and their implications.

In light of COVID-19, the following should be taken into consideration:

a) Companies have a legal obligation to protect their employees under occupational health and safety laws (duty of care) and maintain a safe work place;

b) Companies should wait for directions/supervision of a health care provider in order to process the health status of a data subject pursuant to the Data Protection and Privacy Act, 2019 (the DPPA);

c) Companies should request employees and/or visitors to inform them if they have visited an affected area or if they are experiencing symptoms in order to allow the employer to take any necessary steps in the workplace that are required;

d) Companies should not name or disclose the identity of an affected individual in order to maintain confidentiality;

e) Companies should ensure that any special personal data that is processed is adequate, relevant, limited to what is necessary in relation to the purposes for which it is processed and that the data is retained for the shortest time possible.

The Information Commissioner (the ICO) in the United Kingdom confirmed that organisations should keep staff informed about cases of COVID-19 in their workplace and reminded organisations to avoid naming individuals. In our view the Courts in Uganda and the National Personal Data Protection Director (once appointed pursuant to the DPPA) would likely take a similar approach in that the identity of affected employees should not be disclosed.

2. Are there any local employment or privacy laws relating to employer disclosure (internal or external), on handling or storage of the affected employee's medical data?

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Yes, the Constitution of Uganda, 1995 and the Data Protection and Privacy Act, 2019 contain provisions relating to employer disclosure (internal or external) on handling or storage of the affected employee's medical data.

H. LITIGATION

1. Can I obtain interim reliefs from the courts during this period in light of the closure of the courts and registries in the event I have an urgent matter?

It is possible to obtain interim reliefs during the suspension period, subject to the issuance of a Certificate of Urgency by the Court upon application by the party seeking for the interim Order.

Judicial Officers are nevertheless required to be at their duty stations during the period of closure of the Courts.

2. Will you be able to file or serve documents/pleadings following the closure of courts, registries and most offices? If not, will I be penalised for failing to do so?

Court Registries are expected to remain open and accordingly documents can be filed.

The Government however discourages the use of public transport, which is the mode used by many Registry Staff, advising persons with no private means of transport to stay at home. This is likely to result into few or no staff turning up for work to receive Court documents.

Where it is impossible or impractical to file and serve a document, either due to the fact that it is not urgent or if one is unable to effect service, it would be useful if parties could agree in writing on the mode and timeline within which they could file and serve their documents.

3. Can I execute a court order during this period of suspension of court activities?

All execution proceedings have been suspended for 32 days with effect from 20th March 2020.

4. How will new dates be obtained for the matters that were to be heard or mentioned during the suspension period?

New dates will be issued once judiciary operations normalise.

5. What will happen to interim orders that were set to lapse during the suspension period?

Parties may extend them by consent or upon application by letter to the Court. In any event, all execution proceedings have been suspended for 32 days with effect from 20th March 2020. This period may be extended subject to further guidance by the Chief Justice of Uganda.

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6. **What is the status of operations at the Court of Appeal and the Magistrates Court during this period?**

The Chief Justice's directive to suspend Court hearings and appearances applies to all Courts, i.e, the Supreme Court, Court of Appeal (which doubles as the Constitutional Court), the High Court and all Courts subordinate to the High Court.

7. **Can a witness be excused from attending court if their date falls outside the period when court activities have been suspended but the witness is reluctant to travel owing to COVID-19?**

A witness would be required to attend Court whether physically or via the video conferencing facilities available in some Divisions of the High Court.

8. **Will I be able to obtain an early date for my matter, in light of the backlog of cases that will arise owing to matters that were taken out during the suspension period being prioritised?**

Court date fixtures will largely depend on the diaries of the respective Judicial Officers and the vigilance of the Advocates.

I. BANKING & FINANCE

1. **Are there any statutory protections available to a borrower in the face of a pandemic?**

Currently there are none. A lender may however be requested to agree to defer payment of the principal/interest on a loan but the lender is not obliged to do so. However, the Central Bank of Uganda (**BOU**) issues a statement on measures to mitigate the economic impact of COVID-19 including a waiver on limitations on restructuring of credit facilities at financial institutions that may be at risk of going into distress due to the COVID-19 pandemic.

2. **What are the permissible default charges under the Bank of Uganda Consumer Protection Guidelines (2011) including interest in the event that the lender declares a default?**

The permissible default charges will be guided by the Facility Letter/Agreement executed between the borrower and the lender.

3. **How do the current circumstances surrounding COVID-19 affect; Stamping and registration of securities; and Land Control Board (LCB) meetings?**

a) **Stamping and registration of securities**

A notice from the Ministry of Lands, Housing and Urban Development was issued to the public on 18 March 2020 issuing interim guidelines on restriction of non-essential visitors to the Ministry Headquarters and Zonal Office Premises pending further guidelines from the Government. In practice,

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many of the registries although open for business are severely restricting access and as such there is a resultant impact on service delivery.

This significantly impacts the day to day land registry processes and may cause considerable delays to transactions.

The Ministry of Public Service Circular Letter No. 3 of 2020 (Guidelines on Prevention Measures Against Corona Virus (COVID-19)) issues on 25 March 2020, require all government departments such as the Companies Registry to remain open with skeletal staff and this will have a significant impact on turnaround time which then affects the registration of certain registrable securities that have statutory times under the Companies Act 2012. In the event that the Companies Registry does close, it is anticipated that affected parties will have to obtain court orders to allow them to have time expanded for their securities to be registered out of time.

As at 26 March 2020, parties can continue with the registration of security rights at the Security Interest in Movable Property Registry which remains open.

b) Land Boards meetings

Land Boards such as the Kampala District Land Board, Buganda Land Board, Uganda Land Commission have not issued any separate communications on their operations however they are required to comply with the Ministry of Public Service Circular Letter.

We do anticipate a significant slowdown in activity and any sittings of these Land Boards and it may be the case that some transactions will be time barred on the application for consent from any of the above Boards due to the Boards not sitting during this period. While the courts can issue orders extending the application time in such instances, these very courts are also temporarily closed during this period as directed by the Chief Justice.

4. Does the impact of COVID-19 affect the enforcement of securities?

The COVID-19 pandemic has a direct bearing on enforcement of securities. In the event that COVID-19 does not constitute a force majeure event under the terms of a financing arrangement and the borrower defaults under the terms of the agreement, the lender can proceed to enforcement as provided in the relevant security document.

The Chief Justice, Honourable Bart Katureebe issued a directive on 19 March 2020 on the measures to be taken by the courts to mitigate the spread of COVID-19. Lenders that elect to sue for the repayment of their loans may not get timely relief as suits may not be heard unless filed under a certificate of urgency. Courts shall not hold any open court sessions for 32 days from the 20 March 2020. In such cases, manifest urgency must be demonstrated. Specifically, the execution division has suspended all proceedings.

Lenders may be forced to resort to other enforcement mechanisms that do not involve government agencies and offices or auctioneers such as private sales or any other mechanism set out in the finance document that does not involve the land registries, the courts or any of the government agencies.

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5. Can COVID-19 constitute a force majeure event under a loan agreement?

A typical loan agreement is unlikely to have a force majeure clause. In the event that the loan agreement contains a force majeure clause, parties would look to the force majeure provisions of such agreement. In the case where there is no force majeure clause, a borrower seeking to terminate the loan agreement and subsequent release from payment obligations thereunder would likely rely on the doctrine of frustration. The doctrine may arguably be applied where the performance of a contract is rendered impossible due to the occurrence of events beyond the control of the parties to the contract.

Whether a particular clause is triggered will depend on the drafting of the clause. Force majeure clauses may comprise either (a) a closed list of triggering events including epidemics or (b) in addition or as an alternative to the closed list, an open-ended "catch all" category to cover any unexpected events outside of a party's control. It is important to note that a force majeure clause cannot be implied into an agreement and parties can only rely on this concept if it is expressly covered in the agreement. Lenders should also carefully review "material adverse effect" clauses in existing loan agreements which we address in the next question.

6. Can COVID-19 constitute a material adverse effect (MAE) under a loan agreement?

In some instances, it could be – but it is difficult to say with any certainty. The precise phrasing of the MAE provision and the specific circumstances.

When invoking a MAE clause, materiality will need to be demonstrated clearly and objectively. Given that MAE clauses tend to lack language that identify a particular event or loss as a MAE, determination of a claim for MAE relief often requires a detailed factual inquiry with an uncertain outcome. Invoking a MAE clause due to COVID-19 issues may be difficult given that the long-term effects of COVID-19 on financial and operational aspects are unknown but much turns on the actual language of the provision.

7. I sold one of my properties and I wanted to use the purchase price to settle a bank loan I had taken. In the event the land registry is shut down, meaning registration cannot occur, will interest continue to accrue on my loan?

Yes. Interest on the loan will continue to accrue on the bank loan. It would be possible to request the bank for a deferral of any payments that would be due during the period of closure of the registry. However, such deferral would be at the discretion of the bank and the bank would have to confirm if any interest will accrue on the deferred payments.

8. Is it possible to have governmental/regulatory intervention in private commercial transactions? For example, can the government require lenders to take certain action or inaction in light of the pandemic?

Given the premise of our law of contract and the principle of freedom of contract, it would not be typical for government and/or regulatory authorities to intervene in private commercial transactions between parties.

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However, in light of recent developments that have seen the COVID-19 declared a pandemic and threatened the financial system worldwide, BOU on 20 March 2020, in consultation with commercial banks, announced a raft of measures which include a waiver on limitations om restructuring of loans for borrowers in an effort to curb the adverse effects that borrowers may face from disruption of their businesses by the pandemic. Restructuring of loans will not happen automatically. A borrower is required to place a request with their bank for restructuring of the facility. The banks therefore have discretion to restructure a loan or not and to decide which other remedy they may avail to a borrower.

9. What are the consequences of declaring a force majeure event under a finance transaction?

The consequences for the parties where a valid force majeure event has occurred will depend on the nature of the affected party's obligations under the agreement, as well as the consequences and remedies expressly provided for in the contract. Contractual remedies for force majeure typically include an extension of time to perform those obligations or suspension of contractual performance for the duration of the force majeure event. If the force majeure event extends over a longer period (the period is typically specified), such clauses usually permit either party to terminate the agreement. Termination will result in the commitments made under the agreement being cancelled and all amounts becoming immediately due and payable.

10. In the event of a force majeure event, what would be the pertinent clauses that would need to be reviewed in the loan agreement?

a) Financial-covenants

If a borrower anticipates breaches of their financial covenants, they may have contractual rights to cure by pre-emptive equity injections or be able to raise subordinated group debt to apply in partial prepayment. In addition, borrowers and lenders will need to scrutinise certain financial covenant related definitions to determine if any available add-backs could be utilised to limit the covenant impact resulting from decreased revenue.

b) EOD's

Some finance documents allow financial covenant breaches to be cured which borrowers may wish to consider. In addition, agreements may be reached that waive breaches for a short period of time. Borrowers can also attempt to negotiate for applicable remedy periods for such events of default.

c) Material adverse effect (MAE)

It is not possible to say at this stage how long the coronavirus and its consequences will last. Therefore, claiming an event of default by virtue of a breach of a MAE clause will require careful consideration of the precise wording of the clause and the surrounding circumstances.

d) Notices (remedy periods, triggers?)

Borrowers should review their loan documentation and, where events of default have been triggered or are likely to be triggered, they should approach their lenders to renegotiate or restructure their loans.

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11. Can a borrower request a moratorium on repayments?

There is no statutory right to a debt moratorium in Uganda outside of an insolvency situation. Borrowers should proactively enter into negotiations with lenders in order to forestall potential loan defaults as this would be in the best interest of all parties involved.

Lenders should take note that the Bank of Uganda announced "Measures to Mitigate the Economic Impact of COVID-19" in order to avoid an increase in non-performing loans in the loan market.

12. Does a lender have an obligation to accommodate a borrower's requests in the face of a pandemic and what would be the legal consequences of a refusal?

Unless otherwise provided in the relevant loan agreement between a borrower and lender, lenders have no legal obligation to accommodate a borrower's request for a moratorium on debt repayments.

13. Can the Uganda Bankers Association (UBA) engage BOU on possible exemption from certain reporting requirements?

Delay of more than 90 days in the repayment of a debt requires a bank to classify the borrower as being in default and the loan as non-performing. This requires the lender to set aside more cash to cover the non-performing loan.

Under the BOU Guidelines, banks are required to maintain certain minimum core capital requirements and also maintain adequate provisions for bad and doubtful debts prior to declaring profits or dividend.

In light of the directive issued on 20 March 2020 by the BOU and the potential rise in non-performing loans in the short to medium term, UBA should consider engaging with the BOU to exempt banks from the requirement of setting aside capital to match the non-performing loans arising during this period. The UBA should also engage BOU and explore the proposed exceptional liquidity assistance BOU may make available for a period of up to one year to financial institutions supervised by the BOU.

J. TAX

1. Instalment taxes – My first instalment tax for 2020 is due on 20th April. What should I do?

Where it is impossible to pay the instalment tax or any other tax by the statutory deadline, you may make a written application (justifying the delay) to the Commissioner General for an extension of time to pay the tax due. An application for an extension of time to pay tax shall be made by the due date for payment of the tax. If the Commissioner is satisfied that there is a reasonable cause, the Commissioner may either grant the taxpayer an extension of time for payment of the tax or require the taxpayer to pay the tax in instalments determined by the Commissioner. However, if the tax is permitted to be paid by instalments and there is a default in payment of any instalment, the whole balance of the outstanding tax becomes payable immediately. The late payment interest would still

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be payable upon the Commissioner granting an extension of time from the original due date for the tax payable.

The above notwithstanding, the URA has issued the "URA COVID-19 Business Continuity Measures" (the "URA COVID Guidelines") to the effect that taxpayers who have executed a Memorandum of Understanding (MoU) and who have payments due in the months of March and April 2020, will have the option to defer and reschedule these payments. The terms of the MoU will accordingly be restructured for the payments to resume in May 2020.

2. My tax return is due soon. What should I do?

Annual self-assessment tax returns should be filed with the URA not later than the last day of the 6th month following the end of the year of income. Most companies have a 31 December year end and the deadline for filing their tax returns is therefore the 30th day of June of every year. Should it be apparent that you will not be in a position to file your tax returns by the due date, for example due to the financial audit for the previous year not having been concluded or lack of data due to unavailability of staff, you may make a written application to the Commissioner for an extension of time to submit the return. This application should be made by the date on which the return is required to be submitted.

The Commissioner, if satisfied that there is a reasonable cause, may grant the extension and notify the applicant in writing. The extension of time granted to file the return shall not exceed an aggregate period of 90 days. The Commissioner may also allow an application for extension of time after the expiry of the due date, if the Commissioner is satisfied that the failure to furnish a tax return was due to exceptional circumstances. The effect of having the Commissioner grant an extension of time is that any penalties that would have otherwise been triggered for late filing will not apply.

Furthermore, according to the URA COVID Guidelines, taxpayers whose accounting date is in September 2020 and are unable file corporation tax returns by 31st March 2020, have been granted an extension of two (2) months to May 2020. Taxpayers whose tax returns for March 2020 are due by the 15th April 2020 and are unable to file the returns have been granted an extension to file the returns by 30th April 2020. This extension applies to Value Added Tax (VAT), Pay As You Earn (PAYE), Excise duty, Withholding tax and taxes under the Lotteries and Gaming Act.

3. Due to absence of key staff in our accounting department, we have just realised that we missed the deadline for filing an objection to a tax assessment– what should we do?

You may make a written application (justifying the delay) to the Commissioner for an extension of time to lodge a notice of objection. The Commissioner, if satisfied with the grounds upon which the application is made, may grant the extension for such period as the Commissioner determines.

4. I have an on-going case at the Tax Appeals Tribunal (TAT) which is due for hearing or mention. What will happen?

On 19th March 2020, the Chief Justice of Uganda issued a directive suspending all court hearings and appearances for a period of 32 days with effect from 20th March 2020. In addition, the URA also

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requested the TAT to adjourn all cases at TAT until the expiry of 32 days as stipulated by the Government and the directive of the Chief Justice.

Contrary to the Chief Justices' directive and URA's request, the TAT has agreed to scale down its activities but will continue to hear tax disputes subject to the guidelines issued by the Government. Despite the above position taken by the TAT, we understand that URA is not attending any hearings and matters are being adjourned to the next available date.

5. What happens with ADR meetings with the URA?

The URA is no longer having physical ADR meetings unless in exceptional circumstances. The URA is exploring other means of holding meetings through tele-conferencing or video conferencing

6. How will I file an appeal during this period?

The TAT is still operating subject to the guidelines issued by the Government. In this regard, an appeal can still be filed at the Tribunal and also served on the URA.

7. What happens when an Agency Notice is issued during this period?

It is highly unlikely that URA may issue an Agency Notice during this period. However, in the unlikely event that an Agency Notice is issued, the taxpayer may seek injunctive measures from either the Tribunal in case there is already a tax appeal filed or the High Court by filing a Judicial Review application together with a temporary injunction and interim order applications accompanied by a Certificate of Urgency application.

According to the Chief Justices' directives, all Court hearings are suspended except for applications for Certificate of Urgency. In this regard, urgent applications are currently being filed and heard by the High Court.

8. How will judgements be delivered by the Tax Appeals Tribunal during this period?

Following a notice from the Chairman of the TAT, all Tribunal matters shall be handled in shifts but in compliance with the Government directives, which include not having public gatherings of more than ten (10) people. In this regard, the Tribunal will be able to issue judgements but in compliance with the Governments directives.

K. CYBER SECURITY

1. During the COVID-19 pandemic, is there an increased cyber security risk? Why?

The effects of the COVID-19 continue to be felt across the World as the pandemic disrupts the health, economic, political and social systems. The social isolation policy has compelled organizations to have their employees work from home as a business continuity measure.

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Inevitably, the shift in working environment has an impact on information security as digital tools available to staff as they work from home may not be as robust as those at the workplace. There is therefore the underlying risk of cyber-attacks as cyber criminals could exploit the situation to penetrate otherwise secure organisational systems. By concealing malicious login without being detected by the target organisation's security team, such criminals could penetrate an organisation's cyber defences. This can easily be achieved through social engineering.

2. What is social engineering?

It refers to a broad spectrum of malicious activities that rely on human interaction to achieve their ends. This could be a call from your "internet service provider" to check on the quality of your internet at home or from your "Bank", to talk about using the new online banking platform.

The realism associated with the increased sophistication of social engineering attacks can fool employees into divulging sensitive information that may make an organization vulnerable to hackers.

3. What is phishing?

It is a commonly used social engineering tactic. It is a cyber-attack that uses emails that appear to be originating from a trusted source, to obtain personal information that can then be used maliciously against an individual or organisation.

The intention is to trick the email recipient into clicking on a malicious link, or download an attachment, which installs malware on the email recipient's device, and enables the scammer to access critical information, such as passwords. This provides a pathway through which the individual's and/or organisation's cyber defences are weakened and accessed by the cyber actor(s).

The current anxiety about COVID-19 has triggered a lot of emails from "experts or state agencies" containing links to information on the pandemic. While some of these emails are genuine, cyber actors are exploiting the situation by:

a) launching phishing attacks using attachments that have data on COVID-19; and

b) sending emails from fake "Government institutions or companies".

Owing to the fact that more people will be working from home or remotely, cyber criminals will continue to look for ways of exploiting this, therefore employees need to be sensitised in order to avoid insider threats.

4. What prescriptive measures should your organization consider in dealing with phishing?

You should consider the following:

a) Does your organisation have in place reminders on phishing including what a phishing email looks like?

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b) Do you have a way for concerned people to report such attacks so that originating senders/domains can be blocked?

c) Have employees been cautioned against clicking on links or opening emails from suspicious sources?

d) Does your anti-virus scan identify suspicious links?

e) Has the business developed an IT/cyber security incident response plan in readiness for any threats?

5. What do insider threats entail?

These are malicious threats originating from people within an organization who have knowledge of the organization's systems, data and security procedures. Insider threats are also a reality for organizations during this health crisis.

Such people include employees, business associates, contractors etc.

With employees working from home, under relaxed supervision, exploiting systems via the office becomes easier.

Further, because of the emphasis on social distancing, security officers are unlikely to go through laptops and bags for fear of getting infected, and this provides a major opportunity to exploit the measures.

6. What prescriptive measures should your organization consider in dealing with insider threats?

The organisation should consider the following:

a) What security measures do you have in place to safe guard against insider threats: do you have host based firewalls, security event management tools, etc.?

b) Has your organisation carried out an internal/external vulnerability assessment in the last 12 months to check for loopholes that can be exploited by malicious cyber actors?

c) Has your organization conducted a general IT audit within the last 12 months?

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