



INTRODUCTION TO THIS DOCUMENT

Goldsmith Solicitors published this article on Nigerian Corporate Law: The legal and regulatory impacts of COVID-19 outbreak on local businesses.

OUR TAKE-AWAYS:

This is what we learned from this document:

- **The enactment of the COVID-19 regulation order given by the Nigeria President will cause a delay in dispute resolution as the courts in the country are also shut down.**
- **There will be difficulty in holding arbitral sessions for international arbitration due to travel restrictions imposed by nations.**
- **There is likely to be a review of respective contracts of employment and relevant company policies due to the present consequences caused COVID-19.**
- **The COVID-19 pandemic is generally likely to have an adverse effect on loan or debt financing obligations.**
- **There is likely to be an increase in cost of doing business due to the direct impact of the COVID-19 on revenue generation.**

CORPORATE LAW IN NIGERIA; LEGAL & REGULATORY IMPACTS OF COVID-19 OUTBREAK ON LOCAL BUSINESSES

INTRODUCTION

Without a doubt, the corona virus has been declared a pandemic by the World Health Organization and has caused series of disruption in various aspects of life.

It is therefore no news that the outbreak of COVID-19 (the virus) has caused almost a complete halt in economic activities in many countries including Nigeria, and this is bound to cause a lot of effects on corporate activities across countries.

Below we will consider some of the potential areas which in our opinion may have been impacted by the 'virus' as regards corporate law in Nigeria.

1. DISPUTE RESOLUTION

This pandemic has had a significant outcome on dispute resolution following the lockdown order given by the President of Nigeria after the enactment of the 'COVID-19 Regulation 2020'. Nigerian Courts as it were, will not be able to conduct day to day hearing of matters and will be unable to deliver judgments to deserving cases within time as the Chief Justice of Nigeria, Justice Tanko Muhammed ordered an initial shutdown of Courts in the Country for two (2) weeks at the first instance, as from March 24th, 2020

Under the 1999 Constitution of the Federal Republic of Nigeria, a Court is required to deliver its judgment within 90 days from the conclusion of evidence and final address. In respect of matters already slated for judgment, it is worthy of note that the number of days lost by the lockdown will have a negative impact and may be taken into consideration in computing the 90 day rule. As such, there may be further delays in delivery judgments in this regard more so as Nigerian Courts are not particularly equipped to conduct cases online or even work remotely .

As regards international arbitration as a means of dispute resolution, there is no doubt that there may be some difficulty in holding arbitral sessions for the cases having their seats for hearing in Europe and/or America as the case may be. This is due to travel restrictions being imposed by various Countries, Nigeria inclusive. Depending on the terms of agreement, there may be need to shift seats and/or explore the possibility of conducting them online. And also depending on the stage at which the arbitral proceeding

is, this pandemic may also have an impact on the usual time for delivering an award in arbitral matters.



2. EMPLOYMENT AND RELATED ISSUES

Respective contracts of employment and relevant company policies will have to be reviewed in line with the present consequences caused by the pandemic to determine necessary steps to be taken by employers of labour and/or employees alike.

It is important to note that the lockdown in operation in some States of Nigeria: Lagos, Ogun and the Federal Capital Territory, Abuja has necessitated the temporary closure of some offices and members of staff being asked to now work from home.

Although, this lockdown is in operation in the above mentioned States, please note that some state Governors have imposed some form of restriction on movement in one way or the other.

In view of this, there is no doubt that company income will be affected and may affect salaries and other monetary benefits payable to individual members of staff.

The question to be determined will therefore be whether in the light of the pandemic and lockdown, companies must pay their employees the exact amount of salaries and benefits contemplated in their individual contracts of employment. The options opened to employers may include:

- i. Redundancy
- ii. Lay-off
- iii. Pay cut

However, the applicability of each of these options is dependent on the particular terms and conditions of the contract of employment.

3. CONTRACT

In a typical Joint Venture Agreement (JV) for instance, it is not unusual to find that each party has an obligation which sometime is time regulated or time specific. Any failure of any party to comply with time specific obligation may expose that party to a potential monetary liability.

However, considering the impact of the pandemic and the lockdown order, the question to be asked is whether any party will be held to be in default for non-performance of their



obligation which has accrued. A consideration of the specific term of each agreement will help determine this issue.

Nevertheless, we reckon that JV's would usually provide for situations or circumstances under which a party can be excused from performance of a contract, i.e force majeure, change of events or situations. Usually, the party intending to claim a force majeure situation will be required under the relevant agreement to take some steps which includes writing the other party to explain why it has become impossible to perform an obligation which has accrued. In some instances, a party is allowed to seek extensions where necessary.

Please note, that common Law principle on frustration may also become applicable depending entirely on the nature of the contract under consideration in any given time.

4. BUSINESS TRAVEL/TOURISM

This pandemic has not only triggered domestic movement restrictions but there has also been international travel restriction imposed by Nigeria Government on high risk countries. The government of Nigeria has announced a suspension of the issuance of visa on arrival to foreigners coming into Nigeria. Visa on Arrival is a government policy which enables qualified foreigners to come into Nigeria for business purposes and be issued their Visa at the port of entry and to stay for a specific period of time.

There would be need to determine what would be the status of those who already have been granted permission to enter Nigeria. Does the suspension order mean a cancellation or can someone who has been granted permission be eligible to enter Nigeria during and anytime the suspension order has been lifted, there is no clear cut answer on that. However, It would be advisable to have a local attorney assist in liaising with the relevant authorization on the point.

5. FINANCING/CURRENCY

The pandemic is generally likely to have an adverse effect on loan or debt financing obligations of necessary parties and could cause a material adverse change. As such, it is important to consider agreement of this nature to see if representations and warranties

previously made by the borrower are still correct and if necessary, extension mechanisms in the contract can be triggered.



Also, the fall in oil prices in addition to Nigeria's inability to earn sufficient foreign currency has resulted in increased currency risk which has arisen from the fall in the value of the Naira, vis-a-vis the United State Dollar.

Sometimes in February, 2020 for instance, the Nigerian Naira traded at 365 Naira per dollar in the parallel market. As expected this has resulted in panic buying as a result of scarcity of foreign currency.

We note that the foreign currency scarcity may affect investors ability to repatriate their earnings from Nigeria in foreign currency. Whereas, the Nigerian Government through the Central Bank of Nigeria has issued a press release that there is no devaluation of the Naira. It will not be unusual if the Central Bank of Nigeria will further issue circulars in the coming weeks essentially to control foreign exchange and assure foreign investors of availability of foreign currency in its reserve to enable them be able to repatriate their earnings.

Other related impacts of the COVID -19 virus and the attendant lockdown will include:

- a) **INCREASE IN COST OF DOING BUSINESS** – The direct impact of this virus is seen in a declining revenue in the past few weeks and is likely to span into months and thereby increase cost of doing business for instance in export and import within Nigeria. Seeing that most countries have their borders closed in a bid to reduce the spread of the virus, companies relying on raw materials from foreign supplies would be greatly affected. The cascading effect will then be a possible reduction in reduction in VAT, import and export excise duties payable to the government and in fact, a decline in government revenue.
- b) **RESIDENCY ISSUE DUE TO LIMITATION OF MOVEMENT** – since the government has ordered a lockdown and limited movement of individuals, the presence of a non-resident person in Nigeria is triggered. As we know it, the residency rule is an important factor for taxing the income of an individual in Nigeria, which means that such resident must have been present in Nigeria for a period of more than 183 days in the year of assessment to determine whether such non-resident will be taxable in Nigeria. While we note that most countries including

Nigeria have closed their borders due to the virus, any worker trapped in Nigeria between the period of this movement limitation may end up being liable to pay tax



in Nigeria on any income made and this may lead to double taxation except such resident is from a country that has signed a double tax treaty with Nigeria.

- c) **CIVIL SERVICE SHUTDOWN DUE TO QUARANTINE** – due to the virus spread in Nigeria, several civil service sectors has shut down operations pending a stability of the outbreak. This includes the Corporate Affairs Commission (CAC), NAFDAC offices, trademark offices, passport and immigration offices, FIRS, the stock exchange sector and even the Courts. The impact of this shutdown is that businesses are unable to file any returns, make any applications or even comply with any regulatory obligations till these sectors resume office. Unfortunately also, these civil service sectors do not have the adequate facility to operate remotely in Nigeria and so there is no possibility of making any online filings that will be promptly attended to at the backend at this time of the outbreak. This then means a total halt on pending company registrations, pending trademark applications and/or renewals, pending NAFDAC applications for product license and many more. In the long run and after the virus has been contained and activities return to normal, this may cause a catastrophic effect on applications as the civil servants/officers will be overwhelmed by the backlogs and pile of applications which they have to deal with and which may slowly be attended to.
- d) **BUSINESS AS A GOING CONCERN** – with the potential impact of this virus on many business operations, there are uncertainties as to the ability of some organizations to continue to operate. There is a threat that companies may go into liquidation and potentially commence both voluntary and/or involuntary winding up.

CURRENT CORPORATE LAWS RELEVANT TO THE OUTBREAK OF THE VIRUS

- i) **The Emergency Economic Stimulus Bill, 2020** - This Bill provides economic solace to Nigerian employers/employee's and addresses three (3) key areas with regards to a rebate to employers on employee's pay as you earn (PAYE) tax – however for this to apply to the employers, they must have retained their employee's from 1st March 2020 till 31st December 2020 to obtain the tax credit of about 50% of the total amount to have been

paid. The Bill also addresses import duty waiver on medicines and medical goods as well as deferral of payment of mortgage obligations on residential buildings for a period of 180 days effective from 1st March, 2020. The Bill



seeks to provide incentive to employers of labour to retain their employees through the period of the virus but it is doubtful that the incentives provided by the Bill is adequate to cushion the effects of the virus on business operations seeing that there might be more unforeseeable events.

- ii) **Statement by the Chairman of the Federal Inland Revenue Service -**
The Chairman has notified taxpayers of the efforts of the taxing authority to reduce the impact of the virus on all taxpayers to include the expansion of some statutory compliance requirements such as VAT and company income tax filings. This is not sufficient as this does nothing to reduce the tax burden but simply postpones that burden to a later date.

CONCLUSION

To conclude, there is no gain saying the fact that the pandemic has had ongoing effects on the global economy in general and corporate law practice in particular.

It is clear that there would be negative impacts of delays with respect to delivery of judgment, as well as potential delays in delivering awards in international arbitration when it comes to dispute resolutions.

This adverse effect of the corona virus will raise issues between employers and employees on many key factors which were not provided for in their contracts and it will also affect the salaries of workers.

It is also clear that the virus will have negative impact on international trade as businessmen and investors are restricted from moving from one country to another as a result of the pandemic.

In addition, foreign currency scarcity will become rampant as a result of the virus and this will affect the value of the Nigerian Naira. It will also affect the repatriation of profits from Nigeria abroad by foreign investors.

The corona virus will also make the cost of doing business in Nigeria very high as borders of countries are closed and importation and exportation of goods will become very expensive.



It is also clear that important public offices are locked because of the effect of corona virus. Applications are being put on hold, many documents are being piled up against each other and this may lead to misplacement of files and documents.

This virus, COVID-19 has brought about so much uncertainty across the world and the effects are continuing to expand. Trying to visualize the total impact of the virus in the context of corporate and commercial transactions is a continuous task and it is hoped that business owners, contractors and employees will be more understanding in these trying times and take preservative measures to keep business operations alive rather than jumping out of them.

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