

COVID-19 IN THE UAE: WHERE ARE WE NOW?

OVERVIEW

As the 2019 Novel Coronavirus (COVID-19) continues to spread across the world, governments are actively working with global and local health authorities to implement nationwide measures to help curb transmission and mitigate virus-related risks as well as offer relief for businesses and individuals in these challenging times. In response, businesses and government institutions across the UAE are taking necessary action to minimise the impact of the pandemic on their operations, workforce and supply chains, in order to ensure that business - to the extent possible and subject to health and safety regulations - continues as usual.

Currently, as at 30 March 2020*:

- 1. Travel and immigration:** The National Crisis and Disasters Management Authority (NCEMA) and the Civil Aviation Authority have announced on 23 March the suspension of all inbound and outbound passenger flights and transit of airline passengers in the UAE for a period of two weeks.

Visitors in the UAE who are not able to leave the country due to closure of air and land borders will be granted necessary support and permission to stay legitimately in the country. Strict 14-day home quarantine for anyone arriving in the UAE has been implemented since 18 March.

On 19 March, the Ministry of Human Resources and Emiratization (MOHRE) cancelled all pre-approved visas and suspended all new visa applications, including work permits, until further notice. Exemptions apply to work permits for Expo 2020 workers and intra-corporate transfers. A renewable six-month suspension of work permit fees and reduction of labour and other charges have also been announced.

- 2. Movement of people:** The Ministry of Interior and the NCEMA have also urged all UAE citizens, residents, visitors and all those living in the country, to stay at home and only leave for work and emergencies. On 26 March, the UAE authorities launched a three-day national sterilisation programme to sanitise all public facilities, streets and public transportation (including the metro service) and extended it until 5 April. During the sterilisation period from 8pm to 6am, everyone is required to stay at home except for those who work in essential services. The authorities have also announced on 23 March that all people use their own family cars with a maximum of three individuals per vehicle.

Anyone who does not comply with the preventive measures, fails to report confirmed and suspected cases to the Ministry of Health, or deliberately transmits the virus, will be subject to fines and/or imprisonment under the UAE Federal Law No. 14 of 2014 on the Control of Communicable Diseases. On 26 March, the UAE Public Prosecution Attorney-General issued [Resolution No. 38 of 2020](#) on the enforcement of a list of violations and sanctions against the precautionary measures issued pursuant to [Cabinet Resolution No. 17 of 2020](#).



- 3. Workforce:** The Federal Authority for Government Human Resources (FAHR) has activated the remote work system for all ministries, authorities and federal institutions, for a renewable period of two weeks starting 29 March. Exemptions apply to hospital workers, civil defense, police, immigration personnel at airports, sea and land ports, and other workers in essential services. Dubai Economy has also directed all private sector companies and commercial establishments (excluding pharmacies, cooperative societies and grocery stores) to implement remote work system for 80% of their employees from 26 March until 9 April.

On 29 March, the Ministry of Human Resources and Emiritisation (MOHRE) issued [Ministerial Resolution No. 281 of 2020](#) on remote working for the private sector. Under the resolution, private sector companies - excluding certain industries – are required to have no more than 30% of their workforce physically present at the workplace, among other precautionary requirements. The MOHRE also issued on 26 March [Ministerial Resolution No. 279 of 2020](#) (which was published on 30 March) regulating the employment stability of the private sector, particularly concerning non-national employees. The resolution covers measures (in agreement between the employer and employee) such as implementation of remote working, granting of paid and unpaid leaves, and permanent and temporary salary reductions, among others.

- 4. Courts:** All Dubai courts (Courts of First Instance, Appeals and Cassation) have adjourned all ongoing civil proceedings to a later date. Service procedures (e.g. notification of claims or filing of applications) and issuance of certificates and personal status documents (e.g. marriage/divorce certificates) are temporarily suspended until 16 April. All judges will continue to issue rulings in the scheduled hearings during the adjournment period and hear urgent matters, criminal cases and appeals involving inmates and detainees, remotely.

The DIFC Courts are currently operating on a work-from-home remote basis, with all hearings taking place via video conference where possible. The ADGM Court is fully operational given its digital platform.

The Abu Dhabi Judicial Department (ADJD) announced the suspension of all executive procedures related to civil cases, including the capture, seizure and arrest of people, the blocking of bank accounts, and the garnishment of vehicles, stocks and properties. However, the decision exempts cases related to alimony and labour disputes.

- 5. Banking and finance:** On 14 March, the UAE Central Bank announced the AED100 billion economic stimulus package (**Targeted Economic Support Scheme (TESS)**) to help relieve the slowdown in the economy and business activity. The UAE Cabinet later approved an additional AED16 billion, bringing the total stimulus package to AED116 billion. The Abu Dhabi Executive Council launched, on 16 March, a new set of initiatives under its AED50 billion three-year stimulus package (**Ghadan 21**), including relief for small and medium enterprises (SMEs) and availability of loans for local companies. The Dubai Government separately announced its AED1.5 billion three-month stimulus package on 22 March, with the Dubai Free Zones Council following suit with their own relief package for SMEs and companies operating in the free zones.

Dubai banks including Emirates NBD, Dubai Islamic Bank, Emirates Islamic, Mashreq and Commercial Bank of Dubai have also rolled out their business relief packages for individual and business banking customers. Similarly, Abu Dhabi banks have launched their package of financial initiatives for individuals and SMEs, including deferment of loan instalments for up to three months, refund of credit card processing fees and zero service fees on utility bill payments until 30 June. First Abu Dhabi Bank and Emirates NBD, on the other hand, have suspended cash and cheque deposits at its branches and advised customers to use digital platforms for banking transactions.



On 27 March, the Central Bank of the UAE and the UAE Banks Federation issued a circular prioritising remote working for the majority of banks and financial institutions, except for 30% of their staff working in critical positions. Also, banks and exchange houses have been allowed to reduce working hours and temporarily close some of their branches as of 29 March for an extendable period of 2 weeks.

- 6. Shipping:** On 30 January, the Federal Transport Authority (FTA) issued a circular to all port authorities, ship agents, owners and ship masters in relation to the undertaking of a health declaration by the ship master accounting for the health of all crew members, at least 72 hours before arrival of the vessel at UAE ports. If any crew member is suspected of infection, the relevant port authorities should inform the FTA before allowing the vessel to enter the port. The FTA has also suspended all ferry services to and from Iran since 27 February and all cruise operations in the UAE until further notice.

The Abu Dhabi Ports also issued a Chief Harbour Master Direction to all port users and workers, prohibiting all crew changes and disembarking of crew members from vessels arriving from outside the Abu Dhabi Ports. Similarly, the Port of Fujairah has issued a notice to all ship agents, bunkering companies and oil terminal users, suspending crew changes in the Port of Fujairah and at the Fujairah Offshore Anchorage until further notice.

- 7. Retail and Hospitality:** The Ministry of Health and Prevention (MOHP) and the NCEMA have announced on 23 March that all commercial centres, shopping malls and wet markets will be closed for a renewable period of two weeks. Pharmacies and grocery stores will continue to be open, while restaurants will only be limited to home delivery services.

According to Abu Dhabi's National Corporation for Tourism & Hotels, hotels under its management are exempted from all management fees and other expenses, while tenants of retail shops and restaurants at its hotels are exempted from rental fees for three months.

All ongoing property rental eviction cases and other executive procedures in Abu Dhabi have also been suspended for a period of two months.

Among the key elements of the Dubai Free Zone Council's stimulus package includes the postponement of rent payments in all free zones in Dubai for a period of six months.

- 8. Telecoms and Utilities:** On 26 March, the Telecommunications Regulatory Authority (TRA) extended the validity of all wireless authorisations of hospitals and medical centres across the UAE, regardless of the expiry date of the authorisation, to strengthen the wireless communication system of the healthcare sector. The TRA also issued a circular to Du and Etisalat to hold off the suspension and disconnection of mobile services, in addition to the provision of free internet data via mobile phone to families with no home internet services, to facilitate access to the distance learning service in light of school closures since 2 March.

Etisalat also launched a number of initiatives for SMEs and businesses including free video conferencing and other cloud services, while Du announced the doubling of internet speed at no additional cost for educational institutions.

Dubai Electricity & Water Authority and Emirates Central Cooling Systems Corporation (Empower) also announced on 17 March, a 10% discount on water, electricity and cooling service fees across residential, commercial and industrial sectors in Dubai for a period of three months. Sharjah Electricity & Water Authority (SEWA) followed suit on 25 March, directing a 10% reduction in SEWA bills in Emirate of Sharjah for a period of three months.



FAQs

A. Workforce and Employment

1. Are employees obliged to disclose themselves as a "risk-factor" to the employer?

The UAE Civil Code sets a general principle that all contracts (including the labour contract) must be concluded and performed in a manner consistent with the requirements of good faith. This could provide grounds for an employer to argue that failure by an employee to disclose themselves as a risk factor is a breach of this obligation, due to the potential creation of a health hazard (and negative affect on the employee's work).

In the circumstances and in light of the measures being taken by the UAE government to prevent the spread of COVID-19 our view is that an employee is obliged to tell their employer if:

- they have a confirmed infection;
- have visited a high risk area; and/or
- have had contact with a confirmed case.

Employees must comply with their employer's absence procedures if they are unable to report to work due to sickness, quarantine or self-isolation.

Individuals who have suspected COVID-19 must notify the health authorities (DHA call centre on 800 342, the Department of Health Estijaba service on 8001717 or the Ministry of Health and Prevention on 80011111) prior to visiting the nearest health centre.

2. Can the employer demand employees to disclose themselves as being a "risk-factor"?

Yes. An employer may request/demand employees to disclose whether they have recently travelled to a high risk area, have been in contact with a confirmed case and/or if they have a confirmed infection.

In the circumstances, it is reasonable for employers to request this information as a measure to help protect the workforce and prevent the spread of the disease throughout the country.

3. Can employees refuse to come to work?

Generally speaking no.

However, a new Ministerial Resolution has just been issued permitting a maximum of 30% of the workforce to work from the employer's premises. Further, priority for remote working is provided to certain categories of employees including pregnant women; workers aged 55 and above; mothers of children in grade 9 and below; and workers suffering from respiratory or chronic diseases. Accordingly, employers are now obliged to ensure that the majority of their workforce are working from home (unless they fall into the list of sectors identified as being exempt from this rule).

For those employees who continue to attend the office (either due to the fact that their employer falls within one of the exempt categories or they are one of the 30% selected to attend the worksite), if the employee has a high risk of developing severe COVID-19 symptoms or there is a confirmed case in the workplace, it will, in the current climate, be difficult for an employer to justify disciplining an employee for refusing to come to work.

4. Can the employer send employees on suspension from work?

Yes, an employer can send employees home from work.



5. When is the employer forced to shut down its operations?

The employer is obliged to impose business restrictions or to close down the business premises if instructed to do so by authorities.

6. Does the employer have the obligation to report infections occurring in the business to the health authorities?

The Federal Law No. 14 of 2014 on the Control of Communicable Diseases requires an employer to report a confirmed or suspected case of COVID-19 to the relevant health authority.

7. If employees are sent on suspension from work, or refuse to come to work or if an operation is being shut down, do the employees still need to be paid?

Whether the employee remains entitled to be paid will depend on the reasons why they are not working:

- Employees who are ill, may be entitled to sick pay.
- If the employee has been sent home by their employer, our view is that they would remain entitled to full pay.
- An employee who refuses to attend work without good reason would not be entitled to pay.

A new Ministerial Resolution permits certain measures to be implemented by employers in order to ease the financial impact of the crisis while balancing the rights of employees, including implementation of unpaid leave and salary reductions (subject to conditions being met).

B. Contractual Obligations

1. What is Force Majeure? Does the COVID-19 pandemic constitute a “force majeure event”?

Force Majeure exists as a doctrine under Article 273 of the UAE Civil Transactions Code and is also derived from the principle established in the French Civil Law. The principle applies automatically to commercial contracts governed by UAE law where the contract does not contain Force Majeure provisions.

The courts have discretionary power to define whether an event falls within the meaning of a "force majeure event" under UAE law. This is dependent on whether the event or the COVID-19 pandemic:

- a. was unforeseeable at the time of entering into the contract;
- b. was unavoidable in terms of occurrence or impact; and
- c. the pandemic has rendered the performance of the obligation impossible.

In light of the measures taken by the UAE government to fight the spread of COVID-19, it is highly likely the courts will consider this pandemic a “force majeure event”.

2. Can a party be excused from contract obligations by citing to COVID-19 pandemic?

Under UAE law a party may be able to excuse itself from performing its contractual obligations in the event of a force majeure.

However, this depends on whether the COVID-19 pandemic falls within the meaning of a "force majeure event" under UAE law based on the stated criteria (i.e. (a), (b) and (c) above).



In principle, parties will likely be able to easily satisfy the first two criteria (i.e. (a) and (b) above). That said, unless a party is able to establish the third requirement, namely evidence the impossibility of performance, force majeure will unlikely apply and the courts will need to quantify and award damages to the affected party.

It is important to note that, in practice, courts will differentiate between partial and total impossibility of performance of a contractual obligation when determining the applicability of force majeure. The impossible part of the obligation shall cease to exist. However, if the impossibility of performance is partial, the affected party has the option to terminate the contract and must notify the other party of such termination. The same principle applies to temporary impossibility of performance.

3. Can a party contract with another counterparty in lieu of non-performance of contractual obligations by original counterparty?

The effect of the force majeure event is that the contract is discharged by frustration. The contract is cancelled without awarding damages for the non-performance of the obligation. The occurrence of a force majeure event does not entitle the relevant party to an extension of time nor allow it to postpone the due date of the performance. In practice, if the party claiming force majeure was successful in their claim, the existing contract will be discharged and they will be able to enter into a new contract with a third party. However, if business in a certain sector is halted as a result of COVID-19, contracting with a third party may lead to the same result.

4. Can a party seek to amend its contractual obligations to mitigate the impact of the COVID-19 pandemic?

In principle, parties to the contract are expected to act in good faith in order to mitigate the negative impact of the event/COVID-19 pandemic. UAE law provides for a form of relief to those who may suffer grave loss in the case of exceptional circumstances (through application of the theory of “Extraneous Cause Events”). Unlike in the case of force majeure, this form of relief does not terminate the affected party's obligations altogether. It simply amends the obligation to make it less onerous (whether practically and/or financially) than if the party had been required to perform said obligation.

In order for a party impacted by COVID-19 to be able to rely on this form of relief, it only needs to establish that the pandemic rendered the performance of its obligations onerous, or more onerous than it would have been under normal circumstances. Notably, for this form of relief to apply, the party does not need to prove that the obligation was rendered impossible - as required for force majeure to apply. In fact, the affected party just needs to demonstrate that the obligation has become oppressive so as to threaten it with grave loss.

C. Compliance and Enhanced Risk

During this time, it is particularly important to be alive to risks arising from dealings with third party business partners or engaging in new types of business, particularly where you are required to seek out new sources of supply - perhaps in higher risk markets - due to disruptions in your supply chain. Counterparties may recognise the opportunity in the current crisis to suggest conduct contrary to compliance policies and programs and / or applicable law. It is therefore critical to continue to effectively manage risks under bribery and corruption and trade compliance laws, and be alert to red flags and potential supply chain issues.

1. How can I continue to effectively manage compliance risks arising from dealings with third party business partners?

There are multiple considerations to assess whether your business will be exposed to compliance risks from bribery and corruption and trade compliance perspectives. You need to consider the market risk of doing business in any new jurisdictions (you can check Transparency International's Corruption



Perception Index [here](#)), as well as the risk profiles and roles of any third parties that do business in these markets (e.g. agents / distributors / lobbyists / customs brokers). These third parties present an elevated bribery risk and you need to understand their roles (ie, if dealing with government/public officials or state-owned customers or if linked to such government/public officials) and ensure that they have been subject to sufficient due diligence (if they are acting on your behalf).

Also, if you are dealing with new parties, products or jurisdictions, you need to ensure that they are not subject to financial sanctions or other trade restrictions. It is essential to continue to conduct appropriate sanctions screening on all new parties you deal with, and to be alert to risks of diversion to sanctioned countries (ie, Iran, Syria, North Korea, Cuba and Crimea).

Alternatively, you should consider whether it is possible to mitigate risk by only dealing with suppliers or third parties that have already been subject to prior (and routinely updated) screening checks.

2. What are the red flags when engaging in new types of business?

If you are dealing with new parties or engaging in new types of business, you need to be alert to unusual transaction structures, or the involvement of numerous entities without a clear rationale. Unusual transaction structures can be risky from money laundering / bribery and corruption perspectives, particularly:

- Parties or payments structures being linked to jurisdictions that are 'offshore' / considered less transparent from a tax perspective. This may indicate an attempt to move money improperly, or to shield the identities of parties involved in the transaction.
- Transactions or payment routes involving various intermediaries, where the role of such intermediaries is vague or unclear.

3. How should I act to protect my company's bottom line in light of the commercial pressures?

When commercial pressures are high, there can be a greater temptation to cut corners from a compliance perspective, or to hastily agree to business which might ordinarily be avoided. You should ensure that that your actions during this period of uncertainty do not violate applicable laws or your compliance policies and do not bypass internal approvals. You should ensure that all financial and business approvals are correctly obtained. Note that external factors such as economic crises will generally never be viewed by regulators as effective justifications for non-compliant conduct.

D. Financing and Financial Services

1. When do you need to disclose to your lenders if you have an existing or potential default?

Borrowers should first be looking to their loan documentation to ascertain whether a default has occurred or is likely to occur in the coming weeks (examples include a financial covenant breach or a loan repayment which cannot or will not be met as a result of reduced cashflows). In Loan Market Association (LMA) standard documentation there will typically be a notification obligation on the borrower to inform the agent (on a syndicated facility) or the lender (on a bilateral facility) of any default. There may also be a deadline within which such notification needs to be given.

Borrowers should be prepared to present a remedial plan for any default (including a proposed deferral period for any repayments) which can then form the basis of a negotiation with the agent or lender (as applicable).

2. What about grace periods?



Again, the loan documentation will govern which breaches have an applicable grace period and this may be specified in calendar days or Business Days (the latter will have its own definition in the loan agreement which should be reviewed). Some defaults will not be capable of remedy, such as misrepresentation, but other breaches which are capable of remedy will usually have a specific grace period included. Some other breaches may also have specific cure mechanics (e.g. financial covenants) and associated timeframes for remedy.

3. Will this be a force majeure?

Whilst it would be unusual to see a force majeure provision in a loan document, it is common to have the concept of "Material Adverse Effect" (MAE). Provisions containing an MAE threshold will only be breached if they have or are likely to have an MAE (this can range from a material adverse effect on the borrower's business/operations to its ability to comply generally with its obligations under a loan agreement).

Borrowers should be reviewing the definition of MAE in their loan documentation and where the term is used to understand what defaults may potentially occur where this has occurred.

4. Are there any concerns from a financial services regulatory perspective that regulated entities should be considering?

Yes, financial regulators in the UAE have primarily been issuing guidance and communications on invoking Business Continuity Plans (BCPs) / Disaster Recovery arrangements (DRs). Regulated financial institutions are required to specifically inform their relevant regulator as and when a BCP/DR is invoked. Firms must ensure that BCPs/DRs are in place to adequately address the specific implications resulting from the COVID-19 pandemic, in order to ensure continued regulatory compliance, including but not limited to areas such as customer protection, confidentiality, financial integrity and continued compliance monitoring.

On 8 March, the Dubai Financial Services Regulatory Authority (DFSA) outlined a number of non-exhaustive considerations in relation to assessments by regulated firms operating in the Dubai International Financial Centre (DIFC), on the effectiveness of their BCPs/DRs. Similarly, the Financial Services Regulatory Authority (FSRA) issued a questionnaire on 9 March for all regulated firms operating in the Abu Dhabi Global Market (ADGM) to complete, which covered a wide range of issues. On 11 March, the UAE Central Bank has similarly asked its regulated institutions to communicate any invoking of BCPs, to ensure that banks have sufficient cash at branches and ATMs, and to ensure digital channels are equipped to handle the flow of what will inevitably be increased usage.

E. Real estate

Generally the primary obligations and rights of both the landlord and tenant are set out in the lease itself. Each lease is different and given the different emirates and free zones in the UAE, there are different governing laws that will apply depending on the location of the premises and the governing law. Accordingly, it is key to understand the terms and conditions in your lease and the applicable obligations. We recommend seeking legal advice if you have any specific questions or clarifications.

1. Can I close my business premises?

In the UAE, many landlords are being very proactive approach with tenants. Other than retail premises that commonly have 'stay open' requirements, so long as tenants continue to pay its rent and other payments due under the lease, there are usually no restrictions on closing or reducing



operations from your site, so it is unlikely that your landlord will have an issue with the premises being closed (or reduced to skeleton staff in accordance with the directives from authorities).

2. What are my rights if the landlord closes the building?

Many leases contain clauses that allow for a rent abatement if the tenant is not able to reasonably access and/or use the premises. However, these clauses are usually linked to damage of the building, which may not apply in the current situation. The terms of your lease would be important.

Under UAE law, there may also be the ability to claim a rental rebate. There are many factors that would be relevant, so specific advice in each instance is recommended.

3. What are my obligations as landlord?

As with the tenant, the obligations of the landlord, will primarily be contained in the lease. In addition, the landlord will need to ensure it complies with any directions provided by any relevant authorities, in relation to notifications of cases in the building and introducing additional health and safety measures.

Whether the additional cost of these measures could be passed onto tenants would depend on the applicable service charge regime and terms of the lease.

4. As a tenant, should I proceed with payment of rents?

Yes, tenants should proceed with payment of their rental terms in accordance to their obligations under their lease agreement. However, it is possible that there may be some certain provisions which will enable the parties to suspend payment of rents.

For further information, please feel free to contact one of the lawyers below or your usual Baker McKenzie contact.

Baker McKenzie Habib Al Mulla.

Contacts



Dr. Habib Al Mulla
Executive Chairman
Habib.Almulla@
bakermckenzie.com



Mazen Boustany
Head of Financial
Regulatory
Mazen.Boustany@
bakermckenzie.com



Borys Dackiw
Head of Compliance
Borys.Dackiw@
bakermckenzie.com



Mohamed El Khatib
Head of Litigation
Mohamed.ElKhatib@
bakermckenzie.com



Steven Henderson
Head of Real Estate
Steven.Henderson@
bakermckenzie.com



Andrew Mackenzie
Head of International
Arbitration &
Construction
Andrew.Mackenzie@
bakermckenzie.com



Omar Momany
Head of Corporate
Omar.Momany@
bakermckenzie.com



Sandeep Puri
Head of Banking &
Finance
Sandeep.Puri@
bakermckenzie.com



Tarek Saad
Head of Maritime
Tarek.Saad@
bakermckenzie.com



Kellie Blyth
Head of IT &
Communications
Kellie.Blyth@
bakermckenzie.com



**Joanna Matthews-
Taylor**
Head of Employment
Joanna.Matthews-
Taylor@
bakermckenzie.com



Wael El Tounsy
Head of Real Estate
Litigation
Wael.ElTounsy@
bakermckenzie.com



Sabina Passi
Senior Associate
Banking & Finance
Sabina.Passi@
bakermckenzie.com



Samir Safar-Aly
Senior Associate
Financial Regulatory
Samir.Safar-Aly@
bakermckenzie.com



Keri Watkins
Senior Associate
Real Estate
Keri.Watkins@
bakermckenzie.com

